

Home Inspection Case Studies

The home inspection industry began as a consumer protection service in direct response to satisfy the demand from homebuyers. "Clearly, consumer demand for home and property inspections will be shaped by the awareness of the benefits of the profession and their confidence in it." (*Inspecting the Future: A Strategy for Canadian Home and Property Inspection Sector – A Discussion Paper, prepared by Association Strategy Group, February 2002*)

Home inspections are becoming more common in a home sale and purchase transaction. With the increased use of home inspections, predictably a displeased homebuyer will claim negligence or damages for systems or components generally considered part of the home inspector's scope of work. In due process, this can lead to a claim through the inspector's insurance - errors and omission policy back to their insurer. The foundation of the service provided by the home inspector is the advice given regarding the condition of the home. Most legal claims against home inspectors plead on the context of the tort of negligent misrepresentation.

The following exemplify a few of the legal case studies based on Canadian law that directly influence the home inspection profession. Credit is acknowledged to – Canadian Legal Information Institute (*Source: <http://www.canlii.org>*) A brief summary judgment of each case is noted in this study. Undoubtedly it is beyond the scope of this study to incorporate and find every applicable case to this date or distribute each case in complete depth. Each condition precedent case must be considered on its own facts.

Moreover, the findings and comments noted in these cases, merely present a few of possible risk-assessment conditions. These cases also emphasize the critical importance of proper home inspector training. Studying these cases and careful consideration of areas of risk reduction would only help serve to reduce the rate of potential claims against the home inspector and equally that of their insurer.

Case Study 1: Fraser v. Knox

1998 – O.J. No. 4379

Ontario Court of Justice, General Division

The 1998 Fraser vs. Knox produced significant implications for all those in the home inspection business. The major issues in this case include a leaky foundation and concealed fire damage in the kitchen. The purchaser was entitled to damages the amount of \$10,000 from the home inspector and the named franchisor on a joint and several bases for breach of contract in negligent misrepresentation.

Some of the significant highlights that arise in this case include:

- that the home inspector conducted the entire inspection before having the purchaser sign the inspection agreement
- the court concluded that purchaser and the home inspector first entered into a verbal agreement based on a telephone conversation, furthermore this did not create any contractual rights between the parties, at the time the phone call the customer knew nothing of the exclusionary language in the written contract
- the court considered the Standards Practice of the American Society of Home Inspectors in which it concluded that the inspector had not met the required

- standard of care by failing to report to the purchaser the evidence of possible basement water leakage
- the home inspector advertises services under the name of an established franchisor and used documentation provided to him by that Corporation and used the franchisor letterhead thereby to court held that the purchaser could look to the Corporation for damages – the court found that franchisor jointly and severally liable to the plaintiff
 - the court held that a duty of care exists between a client and home inspector which arises because the client retains a home inspector for his special knowledge
 - the court determined and used the standards of practice as the basis for determining if the inspection had been adequately performed

One of the most significant findings in this case was the original time of the formation of the contract between the home inspector and the purchaser. The court held that:

[35] The contract which governed the relationship between (the purchaser) and (the home inspector) was an oral contract entered over the telephone. During a telephone conversation in November 1996, (the home inspector) advised (the purchaser) of his qualifications as a building inspector, the nature of a building inspection and the fee he charged to conduct a building inspection for a prospective purchaser of residential premises. During a subsequent telephone conversation in January 1997, (the purchaser) specifically retained (the home inspector) to do a building inspection of the Prospect property on the terms discussed in the earlier conversation. One aspect of the work to be undertaken by (the home inspector) was an inspection of the structure of the basement. It was clearly understood between (the home inspector) and (the purchaser) that the purpose of the inspection report was to ascertain whether there were any building deficiencies of which (the purchaser) should be concerned as a prospective purchaser of the property.

[37] Pursuant to this agreement, (the home inspector) attended at the Prospect property at the agreed upon time, completed the building inspection and advised (the purchaser) of his findings. It was only at this stage that he asked (the purchaser) to sign a document entitled Inspection Agreement.

[39] Instead of providing (the purchaser) with the written report, (the home inspector) attempted at this late stage to modify the terms of the oral contract through the use of an Inspection Agreement. The purpose of the Inspection Agreement was to limit potential liability on the part of (the home inspector) to the fee paid for the inspection services and to protect (the named franchise) from any liability.

Conclusion:

[71] (The purchaser) is entitled to damages in the amount of \$10,000 from (the home inspector) and (the named franchise), on a joint and several bases for breach of contract and negligent misrepresentation. Et al.

Case Study 2: Brownjohn v. Pillar to Post – A Division of R340 Enterprises Ltd.

Date: 20030109 File No. 52779

Provincial Court of British Columbia, Small Claims

In this case the plaintiff alleges 25 errors or omissions in the defendant's inspection. The plaintiff focused on 4 major areas. These included failure to identify termite infestation, failure to advise as to a missing foundation at the breezeway portion of the home, failure to identify signs that water penetration from the faulty roof had penetrated the interior of the premises and error in identifying the age of the furnace.

The important information arising in this case includes:

- the court indicated the defendant could not have been expected to recognize the evidence of termite infestation, and so did not fail to meet the standard of care of a reasonably prudent home inspector in these particular circumstances
- the court indicated it was not satisfied there was a material lack of structural integrity into the breezeway portion of the home
- the court indicated that it was not persuaded that the leak was apparent on a visual inspection without destructive interference with the property
- the court found the defendant responsible for damages of 13/20ths of the furnace replacement costs

The following are additional comments that apply in this case with reference to the performance of a home inspection.

[16] The point made repeatedly in the (the named franchise) contract, and mentioned consistently in the various cases which I was referred – but most importantly, which simply accords with common senses – is that there are limits on what one reasonably can expect from a relatively brief visual inspection undertaken by someone who has no right to interfere with (and by that I mean no right to dismantle, nor to effect any permanent change in) the property which one must remember is not owned by the person requesting the inspection. As well, as a matter of common sense one has to recognize that a service performed for a fee of \$240.00 cannot be expected to be exhaustive.

[20] While I suggest there are obvious limitations to what one can expect from home inspections of the type undertaken in this case, one also needs to be mindful of the responsibility which is taken on by the home inspector. Persons who hold themselves out to the community as professionals prepared to provide advice for a fee – accountants, lawyers, engineers, architects, physicians, and other professionals immediately come to mind – must know that in marketing and providing services, they invite reliance upon their advice and, in doing so, they create a risk that their client will suffer harm if the professional falls short of the standard of care which reasonably may be expected of that category of professional in the particular circumstances, and their advice is wrong.

[21] The home inspector in the context of the average residential home inspection is involved in an inherently risky business. The inspector invites reliance. If the prospective home purchasers did not believe they could secure meaningful and reliable advice about the home they are considering purchasing, there would be no reason for them to retain the inspector. The matter about which the inspector is asked to opine – for example, roof, foundations, and other basic home systems – are of interest to the purchaser precisely because they are aspects of the home which would give rise to the greatest

financial exposure were they to be discovered to be defective after completion of the purchase.

[22] Having regard to all of the foregoing, home inspectors like (the named franchise) and others whose contracts have been considered in earlier cases attempt to limit their potential liability through exclusionary contractual language. They have been enthusiastic in pursuing that objective, to the extent that their contract would ostensibly relieve them of any liability whatsoever beyond the \$240 contract price, no matter how negligent or inaccurate they might be. One imagines that persons wanting useful and reliable advice about their prospective home purchase might be discouraged from retaining inspectors if they really understood that the inspector was doing everything possible to ensure he never could be held accountable for the way in which he did his work. That objective of the home inspector no doubt is one which could be achieved through contract but....only if the client is made to understand that is the case.

Conclusions:

[33] It follows that I find (the named franchise), through (the home inspector), could not have been expected to recognize the evidence of termite infestation, and so did not fail to meet the standard of care of a reasonably prudent home inspector in these particular circumstances and at that time.

[49] On balance, I find the claim relating to the foundation must be dismissed in its entirety.

[54] While I accept that there was water leak-related staining that the (home inspector) did not detect, I am not persuaded that it was apparent on a visual inspection without “destructive” interference with (owner’s) property. It follows that I am not satisfied it has been proved on a balance of probabilities that (the home inspector) failed to meet the standard of care of a reasonably prudent home inspector in these particular circumstances and at that time.

[66] Accordingly, I propose to assess (the purchasers) damages by considering the reduction in the life expectancy and the approximate cost of a replacement furnace.

[96] But I find the purported contractual exclusions of liability beyond the costs of the contract, in the absence of being specifically drawn to the attention of (the purchaser) and being specifically acknowledged by her, to be “sufficiently divergent from community standards of commercial morality that is should be rescinded”.

With respect to article [96], the home inspector must provide the client with adequate time in advance of the home inspection to sign and agree to such terms in the contract.

Case Study 3: Cudmore vs HomeChec Canada Ltd.

Cited as: 2000 MBQB 138

Court Of Queen's Bench of Manitoba

(The purchaser) claims repair costs in the sum of \$17,737 (specified in para. 19 of the statement of claim) plus unspecified general damages for mental distress, interest and costs resulting from her purchase, on June 13, 1997, of a house with a defective foundation at 605 Townsend Avenue, Winnipeg.

She stated that inspection results and opinions she contracted for and given her by the defendants were false and misleading and that she would not have purchased the home if she had received correct and accurate information and opinions prior to her purchase. Additionally the plaintiff claims that the defendants breached their agreement by failing to make a full and complete inspection and by failing to advise her "of certain fundamental defects in the dwelling and of the full extent of the building's defects" and misled her as to the cost of repair of those defects.

The important information arising in this case includes:

- the extent of the defects in and the cost of repairing the basement walls
- The defendants' responsibility for the alleged misinformation given by (the home inspector). – “According to (the purchaser),(the home inspector) told her his estimate of the cost of repairing the basement foundation was \$1,000 for the north wall and a similar amount for the other walls if they were shown to require repair when exposed. According to (the home inspector), his estimate of \$1,000 was for repair of the north wall, which was visually capable of being inspected. He was unsure on the cost of or need to repair the remaining three covered walls. He did, however, concede that his estimate of \$1,000 per wall would be accurate for the concealed walls if they were in no worse condition. They were in no worse condition.”

The court found:

[17] I accept (the purchaser's) evidence of what she was told by (the home inspector). When pressed, I believe he actually agreed with (the purchaser's) account of what transpired. He simply underestimated the cost of the work required to be done to repair the basement walls. (The purchaser's) evidence has not been seriously challenged by the defendants' evidence.

[21] Further, (the purchaser) claims that "as a result of the actions of the defendants...and as a result of the defendants' refusal to pay for the repairs to said dwelling, she has suffered mental distress and has purchased medicines".

Conclusions:

[49] I find that she expected to do some of the work as well as pay the \$4,000 estimated by (the home inspector). Accordingly, she is, in my opinion, entitled to the cost of repair actually paid, including an allowance for parking, the engineers' reports and drugs set out in the statement of claim, which I have totalled at \$16,778.99. (The purchaser) is therefore entitled to that amount less the \$4,000 she expected to pay, or \$12,778.99, for the repairs and out-of-pocket expenses.

[50] In addition, I assess as general damages for her anxiety, stress, emotional disturbance and inconvenience, the sum of \$5,000.

[58] In this case, however, there is no doubt that the making of the statements (giving of opinions) by the defendants was a contractual act. The plaintiff is entitled to the value the Home would have had if the statements were true. The cost of repairs, which was

the difference between the actual repair cost and the opined repair cost, is the appropriate damage amount under that head.

[62] I believe it is common practice now in most purchases of homes of a certain age and condition to include an inspection clause. As purchasers are expected to bear the burden of repairs that become necessary and the buyer is cautioned to be wary, the inspection becomes an important part of the process. The reports issued by home inspectors should be clear and unequivocal, particularly where further inspection is recommended. Further, it is suggested that verbal recommendations be kept to a minimum, and they should be consistent with the written report.

[63] In the report issued by the defendants in this case, under the heading "The Bottom Line", it is stated that "potentially significant expenses (\$500/\$1000/\$) over the short term are identified below". They indicated both the "Exterior" and the "Structure". The ordinary person would expect to be informed that a further inspection was required if that was in fact the case. The above description may or may not be consistent with the report at items 4.18 and 3.0.

[66] There has developed in this community an unregulated and unlicensed industry engaged in performing home inspections. While professing to follow certain standard procedures, these are standards generally unknown, and the failure to meet those standards has no reliable sanction. Perhaps the legislators of Manitoba are reviewing these operations presently and perhaps not. It would do no harm for the Minister of Justice to ask his officials to review the current status.

In particular, article [66] indicates the need and importance for home inspection for "regulation" of the "industry" and proper acknowledgement of "standard procedures".

Additionally there are a number of other interesting cases involving home inspectors. For the sake of brevity, a few more of these are summarized emphasizing the resulting impact on the home inspection profession.

Simard vs. Taylor – found the home inspection company through its agent, did negligently misrepresent the condition of the property in its inspection of the roof, and are liable for the cost of replacing the roof. Furthermore it indicated – I find that they are not protected by the Limitation of Liability clause contained in the inspection report, and are therefore liable for the full amount. (Provincial Court of British Columbia, November 2000)

Martin vs McCormack – found in favour of the home inspector regarding defects in a heat exchanger, indicating there was no evidence to allow the Judge to conclude that he (the home inspector) did not carry out the terms of his contract to complete a visual inspection of these premises in a proper, careful and prudent manner. It was further noted that – the plaintiff has the burden of proving that the defects in the heat exchanger were in existence in late April of 1999 and that the home inspector was negligent in not detecting such problems. (Court of the Queen's Bench of New Brunswick, October 2001)

Gauthier vs Hipkiss – found with regard to water problems, the defendant home inspector stating "Our report did not identify any concerns at the time of the inspection and there is a possibility we should have reported the poor grade". The Judge found this

concession indicating the inspection company had not met the standard of care the law of negligence requires with respect to the home inspection it was retained to do by the plaintiffs. (Provincial Court of Saskatchewan, June 2002)

Brennan vs Gullackson – found the detriment of the purchaser experienced in relying upon the home inspectors negligent misrepresentation concerning the cedar shingles of the house she had made an offer to buy was that she, relying thereon, purchased the house under the belief its shingles would last another 25 years when in fact they needed replacement within the year. (Provincial Court of Alberta, October 2002)

Sandford vs Cox – found the defendants jointly and severally with respect that they did not advise the purchasers of the presence of UFFI. (Urea formaldehyde foam insulation) The defendants indicated – “No comment is offered on any environmental concerns including such things as urea formaldehyde insulation”. In the decision it was also noted that – “if there is any ambiguity between Section 12 of the Standards of Practice in the binder and the above mentioned clause then this ambiguity should be construed against the defendants”. “These defendants did not meet the duty cast on them and there will be judgement against them”. (Court of the Queen’s Bench of New Brunswick, July 1999)

Flemming vs Yakimchuk – found the home inspection company and its employee failed in their duty to the purchasers by failing to note the signs of interior damage from water leakage from the deck and thus failing to investigate further, and in a non-invasive manner by removing ceiling tile and discovering the readily apparent damage to the roof of the basement recreation room. (Provincial Court of Alberta, June 2000)

Gauthier vs Hipkiss – found that the defendant inspection company had not met the standard of care the law of negligence requires with respect to the home inspection. There was a failure to disclose to the purchasers the grade problems constituted negligence on the part of the home inspector. It also found the plaintiffs were also partly authors of their own misfortune. (Provincial Court of Saskatchewan, June 2002)

In the case of **O. Neill vs Pierce** (Court of the Queen’s Bench Manitoba) an interesting postscript is noted – [46] *It would be helpful to prospective purchasers of older homes to know from all their advisers (brokers, home inspectors and perhaps lawyers) that foundation leakage or infiltration is more likely than not to be experienced. If waterproofing is said to have been performed it should appear somewhere in the offer to purchase. Since brokers or agents draw most offers, lawyers are not usually consulted until after they are signed. Nevertheless, before inspection is waived or accepted, lawyers may feel they should advise purchasers as to the results of this litigation.*

Risk Management

Risk management is an important education tool in the real estate transaction particularly for home inspectors. With the increase use of home inspection the odds are simply against the home inspector to eventually run into the unhappy homebuyer who will turn to the home inspector when a problem arises. Risk management can be handled in a number of different forms as noted below.

Risk management begins with a prudently drafted pre-inspection agreement. This document must set forth clearly the duties and obligations of the parties. In addition the pre-inspection agreement must clearly identify and establish reasonable expectations of

the performance of a home inspection. Additionally it must provide a means to resolve problems – should they arise.

As noted in the first legal case study above - Fraser vs Knox – it is imperative that a home inspector must have a signed pre-inspection agreement for each and every home inspection, prior to commencing the inspection.

The Brownjohn vs Pillar to Post case clearly indicated the home inspector in the context of the average residential home inspection is involved in an inherently “risky business”. The inspector invites reliance. If the prospective home purchasers did not believe they could secure meaningful and reliable advice about the home they are considering purchasing, there would be no reason for them to retain the inspector. In addition the inspector was in error in determining and stating the age and condition of the furnace.

Another factor that needs careful attention reflects the diversity of inspection services. There are many home inspection companies providing a wide variety of additional – beyond the basics home inspection services. In offering additional services there can be a general misunderstanding of what exactly is expected in a home inspection.

The Cudmore vs Homechec Canada Ltd. case found that a home inspector must be extremely careful in offering estimates or costs of repair upon which a client will rely upon.

Generally, a home inspection includes that the home inspection company agrees to provide an inspection and report to identify “major” deficiencies of the structure and or systems of the home to the recognized Standards of Practice. Further comments are noted in this paper regarding the Standards of Practice.

Traditionally there are certain standard exclusions such as major structural defects or alterations to the structure that should be performed, detected or evaluated in greater depth, by other specialists unless the inspector is licensed or is certified with professional qualifications. Furthermore it is generally stated that the inspection and report are based upon “visual observations” only of conditions existing at the time of the inspection. And, that the home inspector does not dismantle or perform a technically exhaustive investigation of the property.

A written report that meets the Standards of Practice is a mandatory requirement for all association members of CAHPI. The report forms may be narrative, checklist or a combination of the two. The report must address all of the items that are required by the Standards of Practice.

Another useful inspection information tool is a vendor disclosure statements (also known as Vendor Property Information Statements, Property Condition Disclosure Statements) are useful to both the home inspector and purchaser. They provide property information regarding the general condition of the home with respect to history, condition, structural and environmental conditions. This offers some protection, but its limited by the seller’s knowledge of the property, generally noting vendors are responsible for the accuracy of the information.

More recently, in December 2002 one of the major professional insurance providers for ASHI (The American Society of Home Inspectors) reported the most common claim situations. This list included the following:

1. *The inspection report understates the significance or meaning of a problem condition.*
2. *The inspector orally dilutes the significance or meaning of a problem condition identified in the inspection report.*
3. *The inspection report fails to suggest that the client retain an expert to more fully evaluate a problem condition.*
4. *The inspection report fails to identify or understates a limitation which prevents or hinders more thorough inspection of an area of the premises.*
5. *The inspection report identifies a problem condition but not its significance or meaning.*
6. *The inspector does not obtain a signed pre-inspection agreement from the client.*
7. *The inspector presents the inspection agreement for the first time immediately before, or during the actual inspection.*
8. *The inspection agreement does not provide a limitation of liability provision and other key contracted for limitations.*
9. *The inspection agreement does not identify what services are being offered and those excluded.*
10. *During a re-inspection, the inspector makes admittance of liability to the client or agent.*

(Source: <http://www.arizona-ashi-home-inspection.com/10CommonClaims.pdf>
Business Risk Partners – Providers of the American Society of Home Inspectors
Endorsed Program)

It is of overriding importance to obtain a signed pre-inspection agreement prior to every inspection. Additionally, homebuyers and inspectors must have a clear understanding of the scope of the inspection services and also the limitations. Misunderstandings can be avoided when all parties follow through and realizing their contractual responsibilities. Thus, the basic requirement of a valid contract is presentation before the start of the inspection; the agreement must be clear and unambiguous and agreed upon in written form.

Home inspectors should include a summary of defects at the very end of the report. This does not replace the critical importance of having the client review the full report in its entirety. These should relate to the importance of safety, integrity and habitability of the home. In addition inspection reports must emphasize the priority or importance of these issues to the client to eliminate possible claims and allegations of “I didn’t know” or “I didn’t understand”.

Digital documentation is also an important advantage in helping to reduce liability. More home inspectors are taking and including digital images to substantiate site conditions and enhance their written findings in their reports. Although some may, contest photographs provide compelling documentation that may not always be in favour of the inspector. However, photos are excellent tools for keeping disagreements out of court.

In light of the potential of a dispute, home inspectors are beginning to explore alternative challenge resolution. This is an important viable alternative to court action. There are many different types. The agreement to arbitrate, to have a dispute resolved outside of

the court by a qualified arbitrator is the essence of arbitration. An arbitration clause must be included in the home inspection agreement. Disagreements can be resolved with inspection contracts with clear language clearly defining the arbitration clause.

Standards of Practice

Normally the applicable "standards of practice" will most likely be whatever the contract provides. If the contract is silent as to levels or standards of performance, the court will listen to experts, but get to make its own decision.

The CAHPI Standards of Practice provide the point of reference on prior practice and recognition of the ASHI Standards of Practice developed by the American Society of Home Inspectors. These inspection standards relate more specifically to homes and home inspections. The vast majority of home inspectors perform home inspections. The Standards of Practice does not address specific or detailed standards for commercial inspections. Home inspections are primarily limited to a visual assessment, comprised of a non-intrusive evaluation of the condition of the home at the time of the inspection.

The function of the Standards of Practice defines to the public the systems and components that are to be inspected. The standards also equally point out limitations of the inspection by identifying systems and components that are not included in an inspection. These standards are essential elements to specify and clarify the extent of work to protect the parties. Additionally this assists any misunderstandings and to explain the contractual responsibilities of a home inspection.

The ASHI Standards of Practice are reviewed in detail every two years. As an example in Ontario the Ontario Association of Home Inspectors – Technical Review Committee performs a very similar task for endorsement for its members. This ensures that the Standards are reflective of changes in the profession and additionally addresses a client's reasonable expectation of the home inspector's role in the home buying process.

A written home inspection report is prepared for compensation and issued within reasonable time after the completion of a home inspection. Provision of a written report is a mandatory obligation of association member's home inspection. The written report should address all of the items mandated by the Standards of Practice. The inspector must report on those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of their service life. The report must provide a reason why, if not self-evident, the system or component is significantly deficient, or near the end of its service life. Additionally it must indicate the inspector's recommendations to either correct, monitor or recommend other qualified experts where practicable when reporting the deficiency. The report must also specify any system and components designated for inspection in the Standards of Practice that were present at the time of the inspection, but could not be inspected, and provide a reason why it was not inspected.

Regarding the report format - the report may be narrative, checklist or a combination of the two. Studies completed by the Ontario Association of Home Inspectors – Technical Review Committee in February 2002 on the matter regarding promotion of a "mandatory report system" for the association members found the following.

1. That a mandated report - restricts the amount and type of information delivered to a consumer.

2. That mandated report forms - restrict fair business practice that could equitably differentiate home inspectors and other proprietary reporting systems that also meet the Standards of Practice.

Members are highly encouraged to include a copy of the Standards of Practice as part of their pre-inspection agreement. This assures that the client is completely aware of the recognized guidelines required by all members. These Standards provide the minimum foundation for performance of the home inspection. Additionally, the guidelines recommend that a negotiated pre-inspection agreement be signed prior to every inspection for the benefit of all parties.

Occupational Standards

In this section the study will take a brief look at the impact of a typical claim on the "Occupational Standards" for Home/Property Inspectors. These duties are part of the normal operating expectations for the performance of the home inspection.

"The title professional home/property inspector refers to professional who uses his or her training, experience and professionalism to report in an object of manner on the operation, condition, necessary repairs and safety of existing properties and dwellings through visual and non-intrusive means and through operating normal user controls.

In addition many professional home/property inspectors do more, such as the inspection of small (under 600 square metres) commercial buildings, pre-renovation consultations and problem identification related to structure/conditions of other properties.

When major concerns and/or defects are identified, clients are advised of the necessary steps to take, possible solutions and potential risks involved. Inspections of structures and properties are entirely visual nature and may include a recommendation for further investigation by specialists when necessary.

Professional home/property inspectors follow a comprehensive standard of practice, which is available to the client, and provide a written report according to such standards of practice. As interpersonal communications is an integral part of the ongoing inspection process, the inspector must be able to communicate, verbally and in writing, the findings and recommendations in specific, easily understood terms.

Professional home/property inspectors must constantly be aware of their legal liability in duty of care when inspecting homes and properties, and must take steps to protect themselves in their organizations from potential litigation."

(Reference: Occupational Standards for Professional Home/Property Inspector May 1st, 2001)

In reviewing a number of the insurance claims against home inspectors the "Occupational Standards for Professional Home/Property Inspector" were benchmarked. The required "task" of the home inspector was identified. The task "identifies a specific obligation reflecting a distinct activity relevant to the assignment of the occupation".

The "occupational standards" define the scope of the work expected as the minimum level of performance accepted by industry professionals. The standards were based from actual inspection situations encountered by experience through collaboration and

agreement from professional home and property inspectors. These obligations are part of the normal operating expectations for the performance of the home inspection.

The following scenario reflects reasonably standard inspection protocol for the issue with respect to basement water leakage.

A) The inspector's supporting knowledge and abilities include:

Outlines methodology (1.01)

- Knowledge of methods of inspection (1.01.01)
- Knowledge of Standards of Practice (1.01.02)
- Knowledge of duty of care to clients, the public and others in the transaction (1.01.03)
- Ability to convey limitations of the inspection (1.01.06)
- Ability to direct client to specialized services outside the standard of practice – such as structural review or evaluation by a waterproofing contractor (1.01.07)

Determines scope of work (1.04)

Explains building defects (2.03)

B) Task 6 – Visually inspects the exterior structure

Context Statement: Professional Home/Property Inspectors visually inspect the exterior structure of the building(s). They observe and describe the conditions of the structural components, such as foundation, walls and roofs, and report on observed signs of defects caused by improper workmanship, inappropriate materials or deterioration/degradation, etc. In some cases, the Professional Home/Property Inspector may physically probe structural components displaying signs of rot or decay.

Visually inspects condition of exposed foundations (6.01)

- Ability to identify defects in exposed foundations such as cracks, water penetration, frost damage and movement. (6.01.06)

C) Task 8 - Visually inspects site elements

Context Statement: Professional Home/Property Inspectors visually inspect the building surroundings such as vegetation, driveways and grading purely from the impact that these elements may have on the building, and occupant safety. They are not required to inspect or report on the condition of the landscaping, recreational facilities or outbuildings (other than garages and carports) unless specifically contracted to by the client.

Identifies potential impacts of site surroundings. (8.01)

- Visually inspects condition of site for grading. (8.02)
- Ability to identify impact on building of improper grading and water control system. (8.02.05)

D) Task 11- Visually inspects interior spaces.

Context Statement: Professional Home/Property Inspectors observe the condition of readily accessible interior wall, ceilings and floor finishes, installed fixtures and trim, and

report signs of damage, deterioration and hazards. In some cases, the Professional Home/Property Inspector may physically probe structural components displaying signs of rot or decay.

Visually inspects condition of walls. (11.01)

- Ability to identify wall defects such as cracks and water damage. (11.01.04)
- Visually inspects condition of floors. (11.02)
- Ability to identify floor defects such as slope, deflection, and water damage and trip hazards.

E) Task 12 – Visually inspects interior structure.

Context Statement: Professional Home/Property Inspectors perform a visual inspection of the accessible interior structural components to detect and report conditions which need repair or further evaluation by a qualified professional. Such conditions include deterioration, deflection and improper alteration. The inspection is limited to floor, wall, foundation, ceiling, roof, stair and railing assemblies which are visible, accessible and not covered by finishes or furnishings.

Visually inspects condition of interior foundation structure. (12.03)

- Knowledge of remedial measures for common foundation problems. (12.03.03)
- Ability to identify defects in foundation systems such as settlement, cracks, bowing, shrinkage, progressive cracks, cold joints, water infiltration, degradation and pyrite. (12.03.04)

Visually inspects foundation systems for leaks and water infiltration. (12.04)

- Ability to identify water infiltration. (12.04.07)

Based on a review of the “Occupational Standards” inspectors are required to be knowledgeable and skilled in detecting “visible” signs or evidence of a basement water leak. Furthermore once detected – the inspector now has an obligation to report the defect and provide their client with the implication of the defect.

Coordination of Standards

The Standards of Practice and the Occupational Standards are currently two separate entities. Most home inspectors are likely to utilize the Standards of Practice over the Occupational Standards. It is in the best interest of the profession that the two documents be closely analyzed and coordinated to provide a more distinct CAHPI National Standards of Practice. This will assure that no gaps exist.

Balancing Act

Liability concerns have quickly become the dominant discussion in nearly every field of business. Exposure to liability runs equally as high for those connected to real estate sales. Most home inspectors are very dependant upon realtors for referrals. Sometimes home inspectors face the pressure to dilute and downplay the significance of problems discovered during an inspection. Real estate agents frequently refer inspectors who will tend to put a more favourable viewpoint to a significant problem. Realtors that refer home inspectors, objectively is not a bad thing as long as they are referring at least three

home inspectors with professional certification. However, more equitably all qualified home inspectors must have fair and equal access to potential clients.

There is an inherent conflict of interest in agents referring home inspectors. It does not always provide adequate protection for a purchaser between real estate agent and the home inspector, particularly where home inspectors are indemnifying a negligent referral from a real estate agent or real estate company. In the case of *Herner vs Housemaster*, the courts found such collusion to be a matter of policy. This opinion by the New Jersey Superior Court holds that those home inspectors could violate the Consumer Fraud Act and be liable for faulty inspections.

(Source: <http://lawlibrary.rutgers.edu/decisions/appellate/a6252-99.opn.html>)

When a real estate agent refers a purchaser to a home inspector to perform an inspection within this seemingly simple arrangement sits a multiplicity of potential risky obligations. This includes the prospective impact of the sale of the property, the vendor, the banks or finance company and the Realtor.

During the inspection, the purchaser is relying on information to make an informed decision on the purchase. In addition, the conditions reported can have an impact on the bank or Mortgage Company with respect to underwriting requirements and their consideration to risk exposure. If the vendor is put into the position with an unfavourable inspection report, the purchase will likely fail. If the inspection report is inaccurate, the inspector could be exposed from the vendor or purchaser. With this being the case, some vendors have threatened to sue inspectors over the loss of the sale.

Standard of Care

The standard of care applicable to a home inspector is the same applicable to any other professional person. The term "standard of care or reasonable care" is synonymous with "due diligence". For ordinary members of the home inspection profession the duty is to possess and exercise a reasonable degree of knowledge, skill and care. What should an ordinary member of the profession have done under similar circumstances?

The test for negligence is most often informed by the standard to which most members of the profession would adhere. Home inspectors follow a minimum Standards of Practice. Furthermore, most are either trained or certified through membership in a professional association. Moreover, they must use their knowledge and inspection skills to inform their client about the condition of the property being inspected.

There is no question today that the law allows recovery for negligence in providing professional advice. This applies both under terms of contract and equally as well in the absence of a written contract for the tort on negligence. The standard practice of due diligence is that there is no standard. It does vary according the level of risk accepted between the home inspector and the client.

Raising The Bar

The tangible results of a national initiative between the home inspection sector and the municipal building officials in Canada completed "Occupational Standards" for each of the professions. These documents present the specific competencies and tasks to each

sector. The secondary objectives include ongoing studies to enhance education and training across Canada for both sectors.

The trend in the home inspection professional is higher quality training and ongoing continuing education. The national occupational standards are the accepted national standard recognized for the development of training programs to meet the needs of the profession and develop accreditation of programs and certification.

Since the commencement of this report, the topic of “errors and omissions insurance” has become a very hot topic with home inspectors. The premiums have continued to rise and the underwriting standards have become significantly tougher. This has created a two-tiered system in which inspectors even within home inspection associations are either insured or not. Most provincial associations have mandatory errors and omission insurance requirement for their practicing members. Again, at the time of this report fewer companies are available to insure home inspectors for error and omission. This is forcing a significant change in the Canadian home inspection market, which may see a large number of home inspectors leave this vocation. This could influence the insurance claim rates in the future, or reasonable and timely accessibility to a home inspector.