

MISINFORMED INVESTORS MAY SUE PROFESSIONALS

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Appraisers, engineers, lawyers and other professionals who prepare an opinion or report that is used to help sell securities have good reason to be cautious. If the information they provided is found to be misleading or inaccurate, an investor who has relied on it may make a claim against them. Until recently, this liability has applied mainly to the “primary market” in which investors purchase securities such as shares, options, futures and debentures directly from the issuing company.

In most cases, a company seeking to sell securities on the primary market is required to issue a document called a prospectus which describes the securities being offered and provides other important information to assist an investor in deciding whether or not to invest in that company. Under Part 16 of British Columbia’s *Securities Act*, investors who purchase shares directly from the issuing company after receiving a prospectus are deemed to have relied on the information contained in the prospectus. Consequently, they have a statutory cause of action if the prospectus contains a misrepresentation.

Since July 4, 2008 this legislation has also applied to the “secondary market” where more than 90 per cent of all trades occur because it encompasses the major stock exchanges and other places where previously issued securities are bought and sold. Part 16.1 of the *Securities Act* extends similar protection to investors trading in the secondary market as in the primary market. Because so many investors trade in the secondary market, this new provision obviously increases the exposure to claims for those involved in preparing a prospectus.

Under these new provisions, a person who acquires or disposes of shares of a company before that company’s inaccurate prospectus is corrected has a cause of action for damages against those who issued the document and those “experts” who contributed information for the document. “Experts” include auditors, accountants, appraisers, engineers, geologists, lawyers and any others who give authority to a statement by virtue of making it a professional capacity. An “expert” is liable to an investor for misrepresentations contained in a disclosure document when, to quote the relevant parts of the Act:

- (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
- (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
- (iii) if the document was released by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

It can readily be seen, therefore, that this amendment to the *Securities Act* significantly increases potential exposure for professionals who are retained to provide information and opinion for use in connection with a prospectus or other corporate disclosure document. As in all cases when providing professional services, you should ensure that you have a written contract with your client which accurately describes the terms of your retainer and includes any limitations. You should also speak to your insurance broker to ensure that you have coverage for the type of work you have been asked to do.