

Negligently Misrepresented Statements

Arising From Inaccurate Statements or Publications as Negligent Misrepresentations

Helpful Guide to Understanding the Legal Implications Applicable to Inaccurate Statements or Documents as Negligent Misrepresentations



Negligent misrepresentation involves the accidental passing of inaccurate information as opposed to intentional or [fraudulent misrepresentation also known as deceit](#); and, as with any cause of action based on negligence, the Defendant must owe a 'duty of care' to the Plaintiff. In addition, the Defendant must fail to meet the 'standard of care' required; being that the negligent conduct falls below the level by which a reasonable person is expected to behave. Simply stated, more is required than just the accidental passing of inaccurate information that is relied upon - the accidental passing of inaccurate information must be predicated upon by a failure to do what the 'reasonable person' would do, or would avoid doing, when faced with similar circumstances; and of course, like any negligence matter, such negligence must result in damages that were foreseeable, without remoteness, and without negation by public policy concerns. As stated by the Supreme Court in *Edgeworth Construction Ltd. v. N. D. Lea & Associates Ltd.*, [\[1993\] 3 S.C.R. 206](#):

Liability for negligent misrepresentation arises where a person makes a representation knowing that another may rely on it, and the plaintiff in fact relies on the representation to its detriment: *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1964] A.C. 465 and *Haig v. Bamford*, [1976 CanLII 6 \(SCC\), \[1977\] 1 S.C.R. 466](#).

Duty of Care

In regards to the 'duty of care' requirement, it is important to note that the representor must know that others may rely on the information put forth. If the representor is without knowledge that others may rely on the information, legal action as the tort of negligent misrepresentation will fail. Of course, the context of 'others' that may rely on the information can be quite broad and the representor may be directly unfamiliar with the 'others' relying on the representations and

possibly even without any direct relationship. For example, a representor may misstate information within a publication distributed to persons without direct relations to the representor. In such circumstances a duty of care, and therefrom a negligent misrepresentation case, may arise merely from the expectation that the representor knew that persons, while individually unknown but as persons in general, may rely on the representation. For a duty of care to arise and become due in respect of a representation there must exist a sufficiently close relationship between the Plaintiff and Defendant such that reasonable contemplation of whether carelessness might cause harm along with an absence of public policy reasons to negate or limit the duty or persons to whom the duty is owed or the damages which may arise. This general outline of the when a duty of care is said to exist was stated by the Supreme Court in *Kamloops (City) v. Nielsen*, [1984] 2 S.C.R. 2 which was cited by the Ontario Court of Appeal as the test applicable within a negligent misrepresentation in the matter of *NBD Bank, Canada v. Dofasco Inc., et al.*, [1999 CanLII 3826](#) wherein it was said:

[45] The appellant, Melville, argues that he did not owe a duty of care in his personal capacity to the respondent in accordance with the test in *Anns v. Merton London Borough Council*, [1978] A.C. 728, [1977] 2 W.L.R. 1024 (H.L.). The appellant makes two submissions in this respect. He submits that it was not reasonable or foreseeable that the respondent would be relying on him personally. Second, he submits that there are policy reasons why personal liability should not be found against him in the circumstances of this case. These submissions track the two parts of the Anns test as summarized by Wilson J. in *Kamloops (City) v. Nielsen*, [1984 CanLII 21 \(SCC\)](#), [1984] 2 S.C.R. 2 at pp. 10-11, 10 D.L.R. (4th) 641:

(1) is there a sufficiently close relationship between the parties (the [defendant] and the person who has suffered the damage) so that, in the reasonable contemplation of the [defendant], carelessness on its part might cause damage to that person? If so,

(2) are there any considerations which ought to negative or limit (a) the scope of the duty and (b) the class of persons to whom it is owed or (c) the damages to which a breach of it may give rise?

[46] In *Hercules Managements Ltd. v. Ernst & Young*, [1997 CanLII 345 \(SCC\)](#), [\[1997\] 2 S.C.R. 165](#) at pp. 185-86, 146 D.L.R. (4th) 577, the Supreme Court of Canada held that this test applies to negligent misrepresentation. I will deal with the two submissions separately.



Accordingly, it appears that the 'duty of care' owed within statements and documents may be very broad. It would seem that the scope within the duty of care would extend so to include a manufacturer who would owe a duty of care to use reasonable diligence to ensure that the manual for a dangerous product contains accurate operating instructions to an accounting firm in preparing actuarial projections as will be published within an investment prospectus to a seller of an automobile during negotiations within a private sale.

Summary Comment

Whether within sophisticated business transactions or 'ma and pa' type dealings, among other things, reasonable care should be used to ensure that information shared, within statements or documents, is properly accurate whereas if the information is flawed, and relied upon to the detriment of the person relying upon the information, legal liability for the tort of negligent misrepresentation may arise.