



R

RESEARCH REPORT

INVESTIGATING CLAIMS AGAINST
HOME AND PROPERTY
INSPECTORS



HOME TO CANADIANS
Canada

CMHC—HOME TO CANADIANS

Canada Mortgage and Housing Corporation (CMHC) is the Government of Canada's national housing agency. We help Canadians gain access to a wide choice of quality, affordable homes.

Our mortgage loan insurance program has helped many Canadians realize their dream of owning a home. We provide financial assistance to help Canadians most in need to gain access to safe, affordable housing. Through our research, we encourage innovation in housing design and technology, community planning, housing choice and finance. We also work in partnership with industry and other Team Canada members to sell Canadian products and expertise in foreign markets, thereby creating jobs for Canadians here at home.

We offer a wide variety of information products to consumers and the housing industry to help them make informed purchasing and business decisions. With Canada's most comprehensive selection of information about housing and homes, we are Canada's largest publisher of housing information.

In everything that we do, we are helping to improve the quality of life for Canadians in communities across this country. We are helping Canadians live in safe, secure homes. CMHC is home to Canadians.

You can also reach us by phone at 1 800 668-2642
(outside Canada call 613 748-2003)
By fax at 1 800 245-9274
(outside Canada 613 748-2016)

To reach us online, visit our home page at www.cmhc.ca

Canada Mortgage and Housing Corporation supports the Government of Canada policy on access to information for people with disabilities. If you wish to obtain this publication in alternative formats, call 1 800 668-2642.

Investigating Claims Against Home and Property Inspectors

John Kiedrowski, B.A. B.A.(Hons), M.A.
Claude Lawrenson, RSW, RHI
Kiedrowski & Associates Inc.
Ottawa, Ontario
K1Y 3L8

March 18, 2004

Canada Mortgage and Housing Corporation provided funding for this project. The views expressed in this document are those of the authors and do not necessarily represent those of Canada Mortgage and Housing Corporation or the Canadian Association of Home and Property Inspectors.

Executive Summary

One of the fastest growing sectors in the housing market is the home and property inspectors sector. A home and property inspector (HPI) mainly inspects existing homes and commercial buildings.

The home/property inspection sector includes sole-operators, firms, and franchised businesses. Although many HPIs are professionals with satisfied clients, from time to time they are involved in legal action with a client. Recently, some insurance companies have challenged the sector by refusing some HPI errors and omission insurance.

The purpose of this study is to focus on the nature of complaints filed against HPI. The data on insurance claims from 1997 to 2003 reveals that most of the claims appear to be focused on structural issues such as cracks in the foundation (30 claims filed). The next claims most often made against home inspectors are water in the basement (29 claims filed) followed by structural general including walls and some foundations (19 claims filed).

The majority of the claims are from Quebec followed by Ontario, British Columbia, Alberta, Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island and Saskatchewan. No claims were filed in Manitoba. This only represents claims filed and not complaints against home inspectors. The data showed that the insurance companies were paying out more in claims than they were receiving in insurance fees.

The interviews and review of documents, including jurisprudence, show that some HPI are involved in legal challenges because they failed to adhere to the standard of practice or carried out their activities beyond the scope of the national occupational standards.

In addition, some HPI are not properly trained in specific areas such as building sciences. Many of the courses available to HPI through industry associations may need to be reexamined to ensure that proper information is being provided.

Recommendations on how to reduce insurance claims and complaints against HPIs are as follows:

Survey

1. Conduct a survey to determine how HPIS (members and nonmembers) currently respond to complaints.

Training/Education

2. Provide mandatory courses that focus on water infiltration for foundations and roofs, and report writing courses, that could be taught and provided by colleges or accredited institutions. These courses are of a particular interest because of the legal actions in these areas.
3. Establish an independent committee to critically review the courses provided by provincial associations for their members. Some of the key questions the committee should examine are the following:
 - a. To what extent should provincial associations be in the business of providing courses?
 - b. To what extent are these courses meeting the general principles of adult learning (e.g., clear learning objectives, evaluation)?
 - c. To what extent should provincial associations provide workshops or information sessions rather than courses?
 - d. To what extent should provincial associations work with community colleges and accredited institutions to provide training?

Standards of Practice

4. Revise standards of practice to clearly state that the client must sign the contract before conducting an inspection. If the contract is not signed prior to inspection, this should null and void the insurance.
5. Develop a standard document for the client that explains the role of the HPI and what they will focus on during the inspection. This document needs to be signed by the client prior to the inspection to ensure that the client is aware of the role of the HPI. The standard document should be national in scope.
6. Revise standards of practice to reflect the national occupational standards.
7. Update the national occupational standards to ensure that the core competencies and knowledge truly reflect the business. For example, some inspectors were sued for inspecting fireplaces and the national occupational standards exclude this activity.

8. Develop a national standard of practice under the banner of Canadian Association of Home and Property Inspectors (CAHPI) and no longer use ASHI (American Society of Home Inspectors) practices.

Contracts/Agreements

9. Establish a committee to develop a model standard agreement for the industry. The model standard agreement should be approved by the industry and reflected in associated bylaws. A lawyer should also review the model agreements.

Risk Management

10. The industry should introduce a risk management strategy. This includes focusing on
 - A Written Report
 - Vendor Disclosure Statement
 - Summary of Defects
 - Digital Documentation
 - Dispute Resolution
 - Clear Standards of Practice
 - Standard Contracts
11. The industry should establish a subcommittee to look at these issues and identify other risk management strategies.
12. The industry should establish a committee to examine the option of having the government regulate the industry or for the sector to establish a self-regulatory framework, which would form part of the risk management strategy.

Consumer Advocacy

13. Establish consumer protocol that includes:
 - The consumer signing off on a document that explains the role and scope of home inspectors
 - The consumer signing the contract prior to the inspection
 - Posting a sample contract on the website
 - Ensuring that the client is present during the inspection, that a reliable replacement is provided

- The home inspector taking pictures of issues that may be of concern
- Revising the national and provincial websites to inform the consumers of this new protocol

Adopting these recommendations and continuing to make progress on national initiatives, particularly with respect to certification, will reduce the number of complaints and insurance claims. Taking action on the recommendations will improve the home inspection profession significantly and will reduce the risk to members of the profession and the consumers they serve.

Résumé

L'inspection des bâtiments compte parmi les secteurs du marché de l'habitation qui connaissent la croissance la plus rapide. Les inspecteurs en bâtiment réalisent surtout des inspections de maisons et de bâtiments commerciaux existants.

On trouve dans ce secteur des entrepreneurs individuels, des entreprises et des entreprises franchisées. Bien que les inspecteurs en bâtiment exercent généralement leurs fonctions de façon professionnelle et à la satisfaction de leurs clients, il leur arrive parfois d'être l'objet d'une action de la part d'un client. Récemment, quelques compagnies d'assurance ont mis le secteur à l'épreuve en refusant de souscrire de l'assurance erreurs et omissions à certains inspecteurs en bâtiment.

La présente étude vise à examiner la nature des plaintes déposées contre les inspecteurs en bâtiment. Les données sur les demandes de règlement soumises de 1997 à 2003 révèlent que la plupart des demandes de règlement semblent porter sur des éléments de la structure, par exemple, les fondations fissurées (30 demandes déposées). Viennent ensuite les demandes portant sur l'infiltration d'eau au sous-sol (29 demandes déposées), suivies des demandes concernant la structure, en général, y compris les murs et, parfois, les fondations (19 demandes déposées).

La majorité des demandes de règlement proviennent du Québec, suivi de l'Ontario, de la Colombie-Britannique, de l'Alberta, de la Nouvelle-Écosse, du Nouveau-Brunswick, de Terre-Neuve, de l'Île-du-Prince-Édouard et de la Saskatchewan. Aucune demande n'a été déposée au Manitoba. On parle ici uniquement de demandes déposées, et non pas de plaintes formulées à l'égard d'inspecteurs en bâtiment. Les données révèlent que les sommes versées en indemnités par les compagnies d'assurance sont plus élevées que les montants perçus en droits d'assurance.

Les entrevues et l'examen de documents, y compris la jurisprudence, révèlent que certains inspecteurs en bâtiment sont impliqués dans des contestations judiciaires parce qu'ils n'ont pas respecté la norme de pratique ou qu'ils ont exercé leurs activités au-delà de la portée de la norme professionnelle nationale.

De plus, certains inspecteurs en bâtiment n'ont pas la formation adéquate dans des domaines particuliers comme la science du bâtiment. Il peut se révéler nécessaire de réexaminer un grand nombre des cours offerts aux

inspecteurs en bâtiment par l'entremise d'associations industrielles pour faire en sorte que l'on communique l'information appropriée.

Les recommandations concernant la façon de réduire le nombre de demandes de règlement et de plaintes visant des inspecteurs en bâtiment sont les suivantes :

Enquête

1. Mener une enquête qui permettrait de déterminer comment les inspecteurs en bâtiment (membres ou non) répondent actuellement aux plaintes.

Formation et éducation

2. Prévoir des cours obligatoires portant sur l'infiltration d'eau dans les fondations et les toits et sur la rédaction de rapports, dispensés par des collèges ou des établissements accrédités. Ces cours sont particulièrement importants en raison des actions en justice dans ces domaines.
3. Mettre sur pied un comité indépendant chargé de faire un examen critique des cours qu'offrent les associations provinciales à leurs membres. Voici certaines des questions clés que le comité devrait examiner :
 - a. Dans quelle mesure les associations provinciales devraient-elles dispenser des cours?
 - b. Dans quelle mesure ces cours répondent-ils aux principes généraux de l'enseignement aux adultes (objectifs d'apprentissage clairs, évaluation)?
 - c. Dans quelle mesure les associations provinciales devraient-elles offrir des ateliers ou des séances d'information, plutôt que des cours?
 - d. Dans quelle mesure les associations provinciales devraient-elles travailler avec des collèges communautaires et des établissements accrédités à offrir de la formation?

Normes de pratique

4. Réviser les normes de pratique afin d'y énoncer clairement que le client doit signer le contrat avant l'exécution de l'inspection. Si le contrat n'est pas préalablement signé, l'assurance devrait être frappée de nullité.

5. Concevoir un document type expliquant au client le rôle que joue l'inspecteur en bâtiment et ce qu'il examine pendant son inspection. Le client doit signer ce document avant l'inspection afin de démontrer qu'il comprend le rôle de l'inspecteur en bâtiment. Ce document type devrait avoir une portée nationale.
6. Revoir les normes de pratique en fonction de la norme professionnelle nationale.
7. Mettre à jour la norme professionnelle nationale afin de veiller à ce que les compétences et les connaissances essentielles correspondent vraiment à ce qui est exigé. Par exemple, certains inspecteurs ont été poursuivis pour des vices liés à des foyers, alors que la norme professionnelle nationale exclut cet aspect.
8. Établir une norme de pratique nationale relevant de l'Association canadienne des inspecteurs en biens immobiliers (ACIBI), et ne plus utiliser la norme de la société américaine des inspecteurs de maisons (American Society of Home Inspector – ASHI).

Contrats et ententes

9. Créer un comité chargé d'établir une entente type pour le secteur. L'entente type devrait être approuvée par le secteur et tenir compte des règlements connexes. Un avocat devrait aussi examiner les ententes types.

Gestion des risques

10. Le secteur devrait adopter une stratégie de gestion des risques. Il s'agirait de se concentrer sur ce qui suit :
 - rapport écrit
 - déclaration du vendeur
 - résumé des défauts
 - documentation numérique
 - règlement des différends
 - normes de pratique claires
 - contrats uniformisés
11. Le secteur devrait créer un sous-comité chargé de se pencher sur ces problèmes et de travailler à d'autres stratégies de gestion des risques.
12. Le secteur devrait créer un comité chargé d'examiner l'option d'obtenir du gouvernement qu'il réglemente le secteur ou la possibilité de faire en sorte que le secteur se dote lui-même d'un cadre

de réglementation, ce qui ferait partie de la stratégie de gestion des risques.

Protection du consommateur

13. Établir pour les consommateurs un protocole incluant ce qui suit :
- Faire en sorte que le consommateur signe, après l'avoir lu, un document qui explique le rôle de l'inspecteur en bâtiment et la portée de son travail.
 - Faire en sorte que le consommateur signe le contrat avant l'inspection.
 - Afficher un contrat type sur le site Web.
 - Veiller à ce que le client soit présent au cours de l'inspection, ou se fasse remplacer par une personne fiable.
 - Veiller à ce que l'inspecteur prenne des photographies illustrant les éléments qui pourraient être des sources de problèmes.
 - Réviser les sites Web national et provinciaux afin d'informer les consommateurs de ce nouveau protocole.

L'adoption de ces recommandations et la poursuite des progrès réalisés sur le plan des initiatives nationales, particulièrement en ce qui concerne l'accréditation, se traduiront par la réduction du nombre de plaintes et de demandes de règlement. Le secteur de l'inspection des maisons s'en trouvera nettement amélioré, et les risques auxquels s'exposent les membres de la profession et les consommateurs qu'ils desservent s'en trouveront réduits.



National Office

Bureau national

700 Montreal Road
Ottawa ON K1A 0P7
Telephone: (613) 748-2000

700 chemin de Montréal
Ottawa ON K1A 0P7
Téléphone : (613) 748-2000

Puisqu'on prévoit une demande restreinte pour ce document de recherche, seul le résumé a été traduit.

La SCHL fera traduire le document si la demande le justifie.

Pour nous aider à déterminer si la demande justifie que ce rapport soit traduit en français, veuillez remplir la partie ci-dessous et la retourner à l'adresse suivante :

Centre canadien de documentation sur l'habitation
Société canadienne d'hypothèques et de logement
700, chemin Montréal, bureau CI-200
Ottawa (Ontario)
K1A 0P7

Titre du rapport: _____

Je préférerais que ce rapport soit disponible en français.

NOM _____

ADRESSE _____

rue

App.

ville

province

Code postal

No de téléphone () _____

Table of Contents

Acknowledgments	2
1. Background	3
2. Objectives	5
3. Approach	5
4. Overview of Industry	6
5. Overview of Insurance Coverage	8
6. Analysis of Insurance Claim Data	9
7. Interviews	13
8. Jurisprudence/Case Studies	17
9. Risk Management	27
10. Occupational Standards	34
11. Coordination of Standards	38
12. Balancing Act	38
13. Conclusions	40
14. Recommendations	41
Appendices	44

Acknowledgments

The authors of the report want to thank the steering committee members and the experts interviewed for their comments and their contribution to the report. These individuals provided helpful insight and understanding on the nature of claims against home and property inspectors. Special thanks must also be given to CMHC for providing research funds for this topic and their support to the home inspection sector to improve the overall professionalism of the group. Also to Darrel Smith, Senior Researcher, Policy Research Division at CMHC for managing the project and providing comments. Finally, the authors want to thank Karyn Schwinghamer, from Schwinghamer and Associates Inc. for her editorial comments on the drafts and for writing the CMHC research highlight.

1. Background

One of the fastest growing sectors in the housing market is that of the home and property inspector. Home and property inspectors (HPIs) mainly inspect existing homes and commercial buildings. The home/property inspection sector includes sole-operators, firms and franchised businesses. In addition, consulting engineers, architecture firms and testing companies are engaged in specialized technical inspection on commercial buildings (e.g., high-rise buildings, shopping malls).

The majority of HPIs work on residential inspections. HPIs typically provide services related to potential home and property purchasers¹, existing home and property owners, financial institutions, and real estate agents for the following purposes:²

1. Pre-purchase inspection of existing homes
2. Pre-delivery review of properties
3. Pre-renovation consultation for properties
4. Property management
5. Provision of legal testimony/opinion
6. Supervision of new construction
7. Problem solving related to the structure or condition of homes and other small buildings
8. Inspections in response to insurance claims
9. Pre-sale inspections

In addition, many HPIs are also involved in being a delivery agent for other services such as evaluating homes to determine their energy efficiencies³. Some HPIs also provide services for Canada Mortgage and Housing Corporation as part of housing programs such as the Residential Rehabilitation Assistance Program (RRAP)⁴.

¹ In some cases, home inspectors may also inspect new homes under contract with some municipalities provided they are qualified to do so.

² In some regions, some of these activities are conducted by MBO.

³ See <http://oee.nrcan.gc.ca/houses-maisons/english/homeowners/grant/grant.cfm> When inspectors provide work under Natural Resources Canada, the inspectors are responsible for errors and omissions insurance.

⁴ See <http://www.cmhc.ca/en/prfias/rerepr/index.cfm>. When inspectors provide under the CMHC programs, CMHC covers them against any insurance claims while carrying out their duties.

Individuals working as HPIs typically have a broad range of experience and academic or vocational training. Some HPIs are trained as professional engineers and architects and hold university degrees. Other HPIs enter the sector with general knowledge or experience in the building trades as contractors, as former municipal building officers (MBOs), or out of interest for a new occupation with little building experience.

Inspections of residential or commercial buildings may be entirely visual in nature or in some cases will penetrate the surface of the building. Most HPIs follow a comprehensive standard of practice that they provide to the customer along with a written report.

HPIs carry out their profession according to varying provincial standards of practice and from time to time face legal action from a client. Legal action mainly stems from the HPI providing some type of written report – for example, that the foundation is sound - and the client later discovering there is a defect to the building that is not reflected in the written report.

Legal action not only has an impact on the individual inspector, but also has consequences for the industry at large. The insurance companies that provide errors and omission insurance for the sector are responding to legal actions by increasing rates. An increase in errors and omission insurance is making it very difficult for individual home and property inspectors to continue to operate with insurance coverage.

Recently, the main private insurance company that has represented the industry withdrew the errors and omission insurance for HPIs. Thus, some HPIs are opting out of an insurance plan and working without any coverage, reorganizing their corporation to limit liabilities or leaving this sector of the industry. Ultimately, the consumer may suffer and the industry as a whole may be tainted.

2. Objectives

The objectives of this report are as follows:

1. Review insurance claims, jurisprudence and other documentation related to the performance of the home inspection sector
2. Review and analyze insurance claims made against home inspectors by:
 - a. Identifying the most common incidents of unreported defects including regional trends
 - b. Identifying common variables or factors throughout the claims
3. Critique insurance claims and jurisprudences in relation to the national occupational standards to identify any potential gaps in training to reduce insurance claims
4. Review some of the contract disclaimer clauses used by the industry
5. Provide recommendations with respect to overall policies and educational/training programs for the industry

3. Approach

To conduct the research project, a steering/review committee was established⁵. The members consisted of the following people:

- Mr. Bill Mullen, President of Canadian Association of Home and Property Inspectors (CAHPI),
- Mr. Brian Crewe, Insurance committee, CAHPI
- Mr. Charles Wood, Member Atlantic Region, CAHPI
- Mr. Bill Sutherland, Member British Columbia, CAHPI
- Mr. Darrel Smith, CMHC

Next, existing case law and related jurisprudence on home inspection and insurance claims were reviewed. This is an important component to the methodology as it provides a comprehensive overview of the case law that will have impact on the other recommendations.

The third method involved a review of existing insurance claims. It was proposed that insurance claim files be reviewed, but this information was not

⁵ A representative from the insurance industry was unavailable to participate.

available. The only data available summarized the nature of the insurance claims, the estimated costs of the claim, the total costs of the claim, certificate number, province and date of the claim. This information provided a synopsis of the insurance claims.

In addition to reviewing insurance claims⁶, other documents (e.g., contracts, literature, standard of practice, occupational standards) were reviewed. This activity was to provide further analysis to identify any gaps in the information.

Telephone interviews⁷ were made with “experts” in the home inspection sector who are familiar with the insurance claims registered against home inspectors.

Finally, it is important to point out that the information reviewed is based on insurance claims as complaints against the home inspection sector. The information reviewed excludes complaints made against the sector and registered with organizations such as the better business bureau, since these data were not available for analysis. Home inspectors may also respond to clients’ complaints directly and these interactions would not be registered with any organization or officially recorded in insurance data.

4. Overview of Industry

The HPI sector provides inspection of residential and commercial buildings. These inspections may be entirely visual in nature or in some cases make way into the surface of the building. Within the sector, there is a national association called the Canadian Association of Home and Property Inspectors (CAHPI). CAHPI encompasses provincial and regional associations with the mandate to promote the interests of Canadian home and property inspectors on a national level⁸.

Currently, it is estimated that there are approximately 1,040 HPis working full time as inspectors who are members of a provincial association. While there are benefits to belonging to an association, there is no mandatory

⁶ HPI in British Columbia are covered by another insurance company. The data on the number of claims was not available for analysis.

⁷ It was originally proposed to interview insurance providers. Unfortunately, these individuals were not available.

⁸ For more information regarding CAHPI and the provincial associations see: www.caphi.ca. It is important to point out that the executive members are volunteers dedicated to improving the sector.

requirement for an inspector to belong to a provincial association. The following table provides an overview of the provincial associations, their members and the number of nonmembers.

Table 1
Estimated Number of HPI in Canada as of 2003

Province	HPI Associations	Members of a Home Inspection Association	Nonmembers of HPI (full and part time)
Atlantic Provinces	CAHI - Atl	35	100
Quebec	AIBQ CAHI - Que	123	550
Ontario	OAH.	525	250
Manitoba	CAHI - Man.	11	30
Saskatchewan	CAHI - Sask	20	20
Alberta	CAHI- Alb	70	150
British Columbia {Yukon, NWT, Nunavut)	CAHI - BC	253	125
Total	****	1,037	1,265

Sources: Estimates provided by CAHPI and provincial representatives

As this sector is not regulated under any provincial or federal legislation, provincial associations have taken the lead to adopt comprehensive standards of practice.

CAHPI has also been involved in several national initiatives to improve professionalism in the sector. In 2001, CAPHI established national occupational standards that identify the minimum knowledge, competencies and skills required to be a home inspector.

Developing the national occupational standard was part of a national initiative called the Canadian Home and Building Officials (CHIBO) Steering Committee on National Occupational Standards. This group established national occupational standards for home inspectors and municipal building officials and identified common core competencies between the two groups.

CAHPI is a member of CHIBO and is involved in the next steps for improving professional standards in the in the sector, which include developing a certification and accreditation model for HPIs.

CAHPI is also involved in the development of national standards of practice, a national code of ethics and working with provincial organizations to ensure consistency in the development of training courses. During the past few years, the industry has moved forward to improve the overall professionalism of the sector.

5. Overview of Insurance Coverage

Currently, there is no mandatory obligation for a HPI to have errors and omission insurance in Canada⁹. However, promotion materials advising consumers on hiring a reputable HPI strongly advocate that they should hire a HPI with proper insurance coverage.¹⁰ Other literature on hiring home inspectors suggests that consumers hire a HPI who is a member of a provincial association, since membership requires them to have errors and omission insurance¹¹.

At the time of writing this report, the Ontario Association Home Inspectors is reviewing mandatory errors and omission insurance by-laws in response to the main insurance provider to the sector withdrawing its policies in the fall of 2003.

There are also cases where individuals who are not a member of a provincial association obtain errors and omissions insurance from their own insurance company.

It is a reality that many HPIs do not have any errors and omission insurance. These individuals believe they provide services in such a professional manner that they do not need to hold any insurance. Other inspectors believe that if they do not have insurance they will not be sued. However, if they are sued, they must fight any legal battles at their own expense.

⁹ In the United States, certified home inspectors in some states must have insurance as well as post a bond. For example, in Arizona the certified home inspector must have errors and omission insurance in the amount of two hundred thousand dollars in the aggregate and one hundred thousand dollars per occurrence. They must also have a bond for twenty-five thousand dollars or proof that minimum net assets have a value of at least twenty-five thousand dollars. Finally, a certified home inspector must have a financial assurance mechanism with a value of at least twenty-five thousand dollars recommended by the home inspector rules and standards committee and approved by the board. See <http://www.azleg.state.az.us/ars/32/00122-02.htm>

¹⁰ See for example http://www.aimrelocation.com/realestate/home_inspection.html

¹¹ See for example, CMHC's note on Hiring a Home Inspector (http://www.cmhc.ca/en/burema/gesein/abhose/abhose_ce35b.cfm)

6. Analysis of Insurance Claim Data¹²

It is very difficult to determine the number of inspectors that have errors and omission insurance. It can be assumed that members in good standing with a provincial association have insurance as mandated by the association. If we use Table 1 as an indicator it can be assumed that approximately 50 percent of those performing HPI services have some type of insurance¹³.

It is also problematic to determine the percentage of inspections that result in lawsuits. The general belief among experts in the field is that to reduce the number of potential law suits, HPIs must increase their knowledge in related fields - such as taking courses in environmental/indoor air quality to understand mold in houses, taking housing construction courses, or taking courses delivered by colleges or accredited institutions. The more knowledgeable a HPI is on the systems of a home, the more competent they are to write a complete report.

To provide some perspective on the types of claims levied against members of CAHPI, the claims from 1997 to 2003 filed with the primary insurance company for the sector are presented in Table 2. The data shows that there were 240 claims made against the industry. The data reveals that most of the claims appear to be focused on structural issues such as cracks in the foundation. (This may also include water infiltration through the foundation.) From 1997 to 2003, there were 30 potential claims against inspectors pertaining to foundation structure.

¹² It is important to note that the focus of the data is on the number of claims made against HPIs and does not relate to the settlements.

¹³ AmeriSpec estimates that half of the inspectors do not have insurance or are under insured. See <http://www.amerispec.net/charbonneau/story.cfm?story=news&headline=insurance>

Table 2
Errors and omissions claims against CAHPI Home Inspectors
for the years 1997-2003

Claim Item	Region	Total
Structural –Foundation(e.g. Cracks)	B,O,Nf,B,O,Q,O,Q,O,O,O,O,O,Q,Q,Q,O,O,O,N,A,O,N,Q,Q,O,Q	30
Water- Basement	O,O,B,B,A,Q,Q,O,O,Q,Q,O,Q,B,Q,O,O,Q,O,O,A,O,O,O,O,Q	29
Structural – General	Q,Q,O,O,O,NB,A,O,O,Q,O,Q,O,O,Q,O,O,	19
Water – Roof	Q,O,Q,Q,Q,Q,O,Q,O,O,A,Q,A,Q,Q,Q,Q	17
Structural –Roof	Q,B,O,Q,O,O,Q,Q,O,Q,O,O,O,O	15
Roofs (e.g., Shingles)	Q,Q,S,O,O,O,O,Q,Q,O,Q,O	13
Pests/vermin Infestation	B,O,O,O,O,O,B,O,O,O,A,O,NB	13
Furnace/Duct Inadequate	B,O,O,Q,O,O,O,O,N,O	10
Chimney	B,Q,O,Q,O,Q,N,A,O	9
Electrical	Q,O,A,A,O,O,O,NB	8
Structural – Floor	Q,Q,Q,O,A,O,N	7
Windows Inadequate	O,O,O,Q,O,N,Q	7
Structural – Rotten	Q,O,Q,O,A,O	6
Mold	O,A,O,O,O	5
Well/Water Supply	B,Q,O,O	4
Code Violations –Undetected	O,O,O,O	4
Plumbing Faulty	O,Q,O	3
Structural-Balcony	Q,A,Q	3
Septic Tank Damage	O,Q,N	3
Oil Tank Inadequate	O,O,N	3
Vendor Missed Sale	O,O	2
Fire Damage Undetected	O,O	2
Water – Deck/Balcony	B,O	2
Moisture	O,Q	2
Fireplace	A,N	2
Water- Main Floor	B,B	2
Wall Inadequate	O,N	2
Appliance – Stove/Heater	Q,N	2
Structural – Stairs	O	1
Bricks	Q	1
Siding	B	1
Pyrite Under Foundation	Q	1
Gas Related	O	1
Uninsulated Cottage	O	1
Insulation Inadequate	Q	1
Soil with Inadequate Moisture Level	Q	1
Drainage – Inadequate	Q	1
UFFI Undisclosed	O	1
Ventilation	A	1
Jacuzzi Water Leak	O	1
Bathtub Inadequate	N	1
Bathroom – Rotten	O	1
Oil Contamination	O	1
Improper Zoning	N	1

P – PEI; N- Nova Scotia; NB- New Brunswick; Nf – Newfoundland; O – Ontario; Q- Quebec; S- Saskatchewan; A- Alberta ;B - British Columbia. *Source: Claims Data provided by CAHPI*

The second most common item claimed against inspectors is water in the basement (29 claims filed), followed by ‘structural general’ including walls, and some foundations (19 claims filed). Some 50 claims (water in basement, roof, deck/balcony and main floor) or 21% of claims are related to water infiltration or water damage. This number appears to be low given that the classification of structural-foundations may also include water infiltration.

The majority of claims are from Quebec followed by Ontario, British Columbia, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island.

A further review of the claims data also shows that from 1997 to 2003, some inspectors had more than one claim. Table 3 provides an overview on the inspectors and their claims.

Table 3
Number of Claims Against Inspectors

Number of Claims	Number of Inspectors
8	1
5	2
4	1
3	5
2	17
1	51

It is interesting to point out that the multi claims of four and over were filed against inspectors in Ontario.

To put these claims into further perspective, Encon Insurance Company, the past underwriters for the national insurance program, provided statistics from claims made from 1998 to July 2003. This information is provided in Table 4.

Table 4
Cost of Premiums and Claims Incurred

Years	Inspectors Involved in Claims	Premium Collected	Claims Paid Out
1998-1999	150	\$193,030	\$233,061
1999-2000	150	\$180,130	\$375,018
2000-2001	153	\$251,650	\$219,550
2001-2002	240	\$446,500	\$475,477
2003-2003*	321	\$803,437	\$719,835
TOTAL		\$1,874,747	\$2,022,942

Source: Morris and MacKenzie Inc. August 5, 2003

According to a report from Morris and MacKenzie¹⁴ they provided information on the claims incurred. They pointed out that from 1998 to 2003, Encon collected \$1,874,747 in premiums, but paid out \$2,022,942 in settled claims. This amounted to a loss of \$148,195 over the stated period.

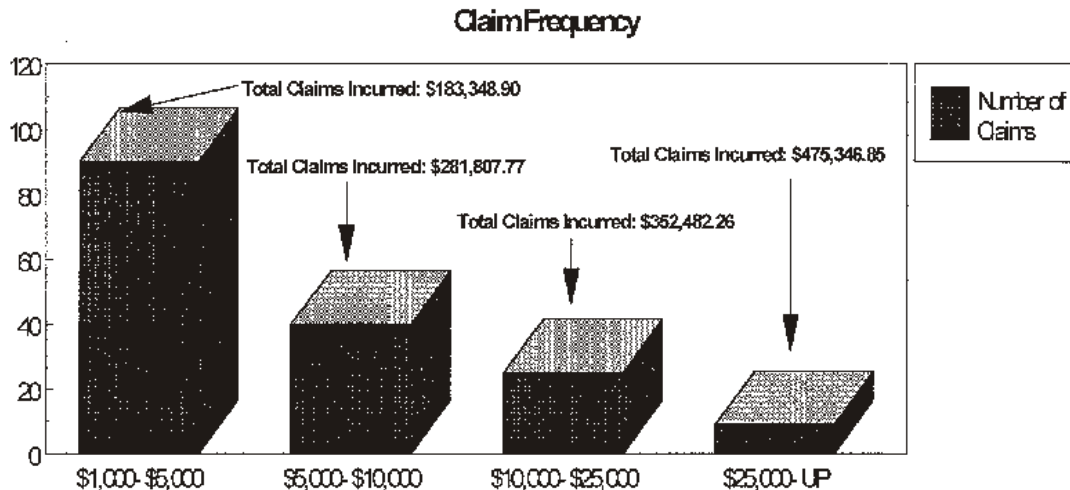
In addition to this data, CAHPI reviewed other claim data, which is provided in the following Chart. In this chart, CAHPI provides the frequency of claims over the history of the program. The majority of claims are for \$1,000 to \$5,000 for a total amount of \$183,348.90. For claims in the \$5,000 to \$10,000 range the total claims incurred were \$281,807.77, while for the range of \$10,000 to \$25,000, the total claims were \$352,482.26.

The fewest claims are for \$25,000 and over, but the total amount of those claims was \$475,346.85. Upon reviewing the bar chart, the following conclusions can be made:

1. The frequency of claims goes down as the amount of the claims against the HPIs increase.
2. Few claims are made for \$25,000 or more, but they are the highest in terms of total claims incurred.

¹⁴ Morris & MacKenzie *CAHPI Claims Experience (draft report)*. August 5, 2003. Montreal, Quebec.

The following chart details the frequency of claims in loss bands over the history of the program:



7. Interviews

As part of the project, several interviews were conducted to provide more analysis regarding the nature of the insurance claims. Although the survey sample was small, the individuals interviewed were identified as experts in the home inspection sector and were well informed on legal claims. The following is a collection of their opinions and may not be representative of the industry.¹⁵

These individuals provided expert testimony in civil cases and were familiar with the nature of many of the insurance claims. Prior to the interview, a copy of the questionnaire was provided (see Appendix A). The questionnaire was developed in response to the analysis of the data as well as feedback from the steering committee members¹⁶. The experts identified were three from Quebec, two from Ontario, and one from Alberta. The experts interviewed have been in the business from 10 years to a maximum of 30

¹⁵ When the question was posed to the committee to identify “experts” in their field, the names provided were limited. Consequently, it was difficult to substantiate the views expressed by experts in this project.

¹⁶ Questions also focused on the relationship between HPIs and real estate agents. The responses by some of the experts could not be substantiated thereby limiting our analysis on these questions.

years. Many of the experts interviewed have been trained as engineers or have partners that are trained professional engineers.

In response to the question on the reasons why this sector is having difficulties in maintaining insurance, the following explanations were provided:

- Clients have very high expectation regarding the role of the home inspector. Consequently, if these expectations are not satisfied, they seek legal remedy.
- Few home inspectors in the business are obtaining insurance, except for those who are members of the association. Membership in the association is approximately 40% of the sector. Consequently, insurance companies are losing revenue in this area.
- Home inspectors are not proactive in their approach - for example, they do not necessarily take pictures nor do they take the required courses.
- Associations have failed to provide risk analysis for their members and are not proactive in dealing with the insurance crisis. Insurance companies have raised these issues, but associations have failed to respond.
- Many of the HPIs lack the skills, experience, and training in terms of the practical applications of doing an inspection.
- Anyone can be an inspector. Consequently, there are higher risks involved with specific individuals.
- The contract between the client and the HPI is poorly written, allowing and HPI to be open to legal scrutiny.
- The contract between the client and the HPI is not clearly understood as to the performance of the activities to be completed.
- There are no government regulations to provide minimum standards of practice for everyone. Regulations would give insurance companies the confidence that the inspectors must comply with specific competencies as well as clearly spell out realistic expectations for the scope of work to be performed.
- Over the years, there have been too many claims and not enough participants in the insurance programs.
- Inferior report writing by the HPI.
- Insurance companies underestimated the nature of the industry. The insurance companies attempted to establish benchmarks for low insurance premiums but realized that these levels cannot be sustained without them losing monies in insuring the industry.

With respect to the nature of the claims and ranking them in order, water infiltration through the foundation was ranked high among the majority of those interviewed. This was followed by water infiltration through the roof. Interestingly, some of those interviewed also noted that windows, plumbing and detection of mold are also a concern in some of the claims. One person interviewed also discussed the issue of rot to the house structure and roof¹⁷. The following reasons were provided as to why these claims occur (question 3C):

- Poor report writing – for example, the problem being identified in a lawsuit not being clearly expressed in a report.
- HPI lacking the proper competencies and experience to identify water infiltration problems.
- Association courses on water infiltration through the roof and foundation being substandard. It was noted that college programs should give these courses.
- Clients assume and/or real estate agents advocate that HPI provide a warranty on the home and if there are any problems seek legal redress against the HPI.

It is interesting to point out that some of those interviewed believed that the majority of the claims against the HPI are frivolous actions. These individuals strongly believed that the insurance company did not handle these cases properly and should have challenged the claim and launched counterclaims. Those experts familiar with Quebec, however, believed that approximately 50 percent of the claims were due to the incompetence of the HPI.

Regarding the role of the client being present during an inspection, the majority of those interviewed believed that there is a higher probability of the HPI being sued if the client is not present during the inspection. If the client is present, they gain a better understanding as to the scope of work and are less likely to challenge the inspector's report.

In some cases where the client is not present, the client has not signed any contract and is therefore not aware of the nature, scope, or limitations of the inspection. In addition, the HPIs do not have an opportunity to point out any of the problems and to make notes in the report. The experts further noted that HPIs who provide an inspection report immediately after conducting the

¹⁷ For more information regarding see a report prepared by Alan Carson for the OAH Insurance Committee Report. August 1, 2002.

examination is more likely to face a legal action than HPIs who deliver a report 24 hours later.

The experts felt that if a report is delivered a day or two later, the inspectors has time to review the results from the inspection and complete a proper report. The experts, however, did note that the demand in a “hot” real estate market does not allow some HPIs this opportunity. These HPIs are under great pressure from clients to provide them with a report so that they can close the deal on the home.

The experts also noted that HPIs who have a client’s representative present during the inspection and/or who take pictures during the inspection will reduce any legal action.

Finally, the experts were asked how the HPI sector could minimize the number of insurance claims. The following suggestions were made:

1. The standard of practice needs to be revised to reflect the national occupational standards.
2. The standard of practice needs to be amended to include the client signing the contract before the inspection is conducted. If the contract is not signed prior to inspection this would cancel the insurance policy.
3. Develop a standard document that explains the role of the HPI and what they will focus on during the inspection. This document needs to be signed by the client prior to the inspection to ensure that the client is aware of the role of the HPI and the scope of work to be performed.
4. The client must be present during an inspection. If this is not possible, a client’s representative should be present. If even this is not possible, the HPI should have another individual or HPI present for the inspection and fees should be adjusted accordingly.
5. Provincial regulations should be introduced to ensure that the relationship between the HPI and client is regulated, as should the industry be regulated in general.
6. Introduce courses on risk management.
7. Introduce information kits on risk management.
8. Associations need to examine the relationship between the real estate sector and the HPI in terms of referral practices.
9. Introduce risk analysis or risk reduction activities for the HPI.
10. Associations should educate the consumer regarding the role of the HPI.

11. Have all courses provided by colleges or accredited training institutions and have associations be responsible for providing workshops or information sessions.
12. A document should be presented to the client or consumer that clearly states the “scope of work” to be performed. Appendix B provides a draft copy of the standards of Practice from Ontario, Appendix C a copy from British Columbia.¹⁸

8. Jurisprudence/Case Studies

Home inspections are becoming more common in a home sale and purchase transaction. With the increased use of home inspectors, it is more common for a displeased homebuyer to 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 the Canadian Legal Information Institute¹⁹.

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 legal case must be considered on its own facts.

The findings and comments noted in these cases present a few of the possible risk assessment conditions. These cases emphasize the critical importance of proper home inspector training. Studying these cases and careful consideration of areas of risk reduction will help serve to reduce the

¹⁸ There is also a standards of practice being developed in the province of Quebec. For more information please go to www.aibq.qc.ca. Or contact Mr. Brian Crewe at (514) 453-3429.

¹⁹ *Source: Canadian Legal Information Institute. <http://www.canlii.org>*. It is important to note that the cases reviewed are cases selected for their importance. These cases are just a sample of the cases that can be found to have been heard in the Courts.

rate of potential claims against the home inspector and equally that of their insurer.

8.1. Case Study 1: Fraser v. Knox
1998 – O.J. No. 4379
Ontario Court of Justice, General Division

The 1998 Fraser vs. Knox decision produced significant implications for all those in the home inspection business. The major issues in this case included 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 franchiser for breach of contract in negligent misrepresentation. Some of the significant highlights that arose in this case include:

- 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, but that this did not create any contractual rights between the parties, and that at the time of the phone call, the customer knew nothing of the exclusionary language in the written contract.
- The court considered the Standards of 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 franchiser and used documentation provided to him by that Corporation and used the franchiser letterhead, and thereby the court held that the purchaser could look to the Corporation for damages – the court found the franchiser jointly and severally liable to the plaintiff.
- The court held that a duty of care exists between a client and home inspector, arising 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 liability²⁰.

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 al²¹.

²⁰

Fraser v. Knox 1998-O.J. No. 4379 Ontario Court of Justice, General Division

²¹

Fraser v. Knox 1998-O.J. No. 4379 Ontario Court of Justice, General Division

8.2. 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 four 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 resulting damages against the inspector amounted to \$1,170.00 plus interest and file claim costs.

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 sense – 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 case²².

²² Brownjohn v. Pillar to Post – A Division of R340 Enterprises Ltd. File No. 52779, Provincial Court of British Columbia, Small Claims

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 it should be rescinded”²³.

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.

8.3. 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

²³ Brownjohn v. Pillar to Post – A Division of R340 Enterprises Ltd. File No. 52779, Provincial Court of British Columbia, Small Claims

distress, interest and costs resulting from her purchase, on June 13, 1997, of a house with a defective foundation in Winnipeg Manitoba.

The purchaser 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 resulting damages against the inspector amounted to \$12,778.99 for repairs and out of pocket expenses, plus a sum of \$5,000.00 for general emotional damages. The important information arising in this case includes:

- The extent of the defects to the foundation 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.”²⁴

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.

²⁴ Cudmore vs HomeChec Canada Ltd. Cited as: 2000 MBQB 138, Court Of Queen's Bench of Manitoba

[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"²⁵.

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 parging, 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

²⁵ Cudmore vs HomeChec Canada Ltd. Cited as: 2000 MBQB 138, Court Of Queen's Bench of Manitoba

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 status²⁶.

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. For more information, please see Canadian Legal Information Institute website at www.canlii.org.

8.4. Summaries of other Cases

Simard vs. Taylor – found the home inspection company through its real estate 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, the Court found that the inspector is not protected by the Limitation of Liability clause contained in the inspection report, and is therefore liable for the full amount. (Provincial Court of British Columbia, November 2000) The resulting damages against the inspector amounted to \$2,722.50 plus interest costs.

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

²⁶ Cudmore vs HomeChec Canada Ltd. Cited as: 2000 MBQB 138, Court Of Queen's Bench of Manitoba

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) Plaintiff claim was dismissed, with no order as to costs.

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) The resulting damages against the inspector amounted to \$2,247.00 plus interest costs.

Brennan vs Gullackson – The court found the home inspector negligent by misrepresenting the conditions of cedar shingles of the house. The inspector noted that the cedar shingles should last another 25 years, but had to replace them within one year of purchasing the home. The homeowner purchased the home based on the inspector's information that the singles did not need replacement (Provincial Court of Alberta, October 2002). The resulting damages against the inspector amounted to \$7, 265.29.

Sandford vs Cox – found the defendants jointly and severally with respect that they did not advise the purchasers of the presence of Urea Formaldehyde Foam Insulation (UFFI). 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 judgment against them”. (Court of the Queen's Bench of New Brunswick, July 1999) The resulting damages against the inspector and vendor amounted to \$15,000.00 plus, provable disbursement costs.

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. “Thus failing to investigate further, and in a non-invasive manner by removing ceiling tile and discovering the readily apparent damage to the ceiling of the basement recreation room” (Provincial Court of Alberta, June 2000). The resulting damages against the inspector amounted to \$7,500.00 plus costs.

O’Neill vs Pierce— In this case, it is worth mentioning the Court of the Queen’s Bench Manitoba’s comments with respect to the importance of obtaining a home inspection and recognition of critical defects:

[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.

9. Risk Management

Based on the analysis of the data, some interviews and jurisprudence, an important factor that the home/property inspection sector should consider is risk management. Risk management is the total process to identify, control, and minimize the impact of uncertain events. The objective of a risk management program is to introduce and have in place countermeasures before the risk materializes.

Risk management is an important education tool in the real estate transaction, particularly for home inspectors.

With the increased use of home inspection, the odds are simply more likely that the home inspector will eventually run into unhappy homebuyers who will not hesitate to focus on the home inspection when a problem arises.

Risk management can involve a number of countermeasures. These include:

1. Pre-inspection Agreement
2. Written Report
3. Vendor Disclosure Statement
4. Summary of Defects
5. Digital Documentation
6. Dispute Resolution
7. Clear Standards of Practice
8. Standard Contracts

9.1. Pre Inspection Agreements

Risk management begins with a prudently drafted pre-inspection agreement. This document must clearly set forth the duties and obligations of the parties. The pre-inspection agreement must also 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 home inspectors have a signed pre-inspection agreement for each home inspection, prior to commencing the inspection.

The Brownjohn vs Pillar to Post case clearly indicates that in the context of the average residential home inspection, the home inspector 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 requires consideration is the scope of work outlined in the pre-inspection agreement. Many home inspection companies provide a wide variety of additional services beyond basic home inspection services, and as a result, misunderstandings can occur.

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

Generally, the scope of work for a home inspection assumes that the home inspection company agrees to provide an inspection and related report that will 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, with formal or informal pre-inspection agreements noting that these services should be performed, detected or evaluated in greater depth by other specialists unless the inspector is licensed or is certified to perform these services.

Furthermore, it is generally stated in the standards of practice that the inspection and report are based solely upon “visual observations” of conditions existing at the time of the inspection, and that the home inspector will not dismantle or perform a technically exhaustive investigation of the property.

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 of the limitations. Misunderstandings can be avoided when all parties follow through and realize 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.

9.2. A Written Report

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, a checklist, or a combination of the two. The report must address all of the items that are required by the Standards of Practice. Based on the interviews, it is highly recommended that a written report be presented 24 hours after the inspection and not provided on-site.

9.3. Vendor Disclosure Statement

Another useful inspection information tool is a vendor disclosure statement, also known as the Vendor Property Information Statements or the Property Condition Disclosure Statement. It is 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 state of affairs. This offers some protection, but is limited by the seller’s knowledge of the property, generally noting vendors are responsible for the accuracy of the information.

9.4. Summary of Defects in the Report

Home inspectors should include a summary of defects at the very end of the report. This does not change the critical importance of having the client review the full report in its entirety. This information should specifically 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”.

9.5. Digital Documentation

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

9.6. Dispute Resolution

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

9.7. 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 for a home inspection, the court will listen to experts, but gets to make its own decision.

The CAHPI Standards of Practice provide acceptable terms of reference. It is based on prior practice and acknowledgment 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 point out limitations of the inspection by identifying systems and components that are not included in an inspection. These standards are essential elements to specifying and clarifying the extent of work to protect the parties. Additionally this assists in avoiding misunderstandings and in explaining the contractual responsibilities of a home inspection.

The American Society of Home Inspector Standards of Practice are reviewed in detail every two years. The Ontario Association of Home Inspectors – Technical Review Committee performs a similar task for endorsement by its members. This ensures that the Standards reflect 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 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 correct or monitor potential problems, or to recommend other qualified experts where practical 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 they were not inspected.

As mentioned above, the report may be narrative, a 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 ensures 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.

9.8. Model Inspection Agreements

A general overview of home inspection contracts or more commonly termed home inspection “agreements” indicates a wide variety of stipulations and definite conditions. Inspectors maintain that flexibility allows them more freedom to differentiate themselves from their competitors.

A review of these contracts showed inconsistencies and omissions of activities to be performed. However, as the case law reviewed earlier in this document revealed, certain exclusion clauses and having the client sign the agreement may be insufficient to relieve the inspector of liability. Even the requirement to give a client full notice and reasonable time can create duress and prove to be onerous for a legally acceptable execution of a contract.

The case law studies further indicate that failing to give the buyer an appropriate chance to withdraw the HPI services by presenting the contract for the first time at the actual inspection constitutes signing under duress, which may void a contract. This is specific to real estate transactions. It is common because of the limited timeframes involved in typical house buying and selling situations, with resulting last minute attempts to permit or arrange an inspection, particularly with buyers sometimes living in another city. The restrictive timeframe and the requirement for quick removal of conditions such as home inspection information contribute to higher demand for instant onsite reports.

Serious attempts in the past to create general inspection agreements or standard contracts drafted by various provincial associations have been set aside for a number of reasons. These include:

1. Limitation on the inspector in terms of scope of work
2. Potential liability placed on the association

3. Minimum performance standards in carrying out the activities
4. Legal issues with respect to the clauses
5. For the standard contract used by ‘qualified members’, the question became what is a qualified member?
6. Standard contracts need to reflect the standards of practice and the occupational standards

The standard contracts developed by provincial associations are provided in Appendix B, C and D.

Given the current state of affairs with regard to limited errors and insurance coverage for the HPI, it would appear that the introduction of standardized agreements could provide a level of consistency to the transaction between the home inspector and the client for a home inspection. This would assist in providing more consistent and equitable contracts for cases brought before the courts. Insurers would also likely see the benefits of a standardized, more clearly defined scope of work.

With respect to a standardized agreement, the single most important article on which there must be certainty is the subject matter. Equally, in absence of express provisions in the inspection agreement, details and conditions can and do change. Home inspection agreements generally indicate what the inspector’s tasks fulfill and what tasks they do not perform. Inspection agreements should also reveal other certain language of limitations, such as those related by weather or other unknown or concealed conditions most likely encountered beyond the control of the inspector.

Home inspectors need to be aware of the potential for legal action arising from their inspections. Care is essential in the wording of agreements that provide reasonable exclusion clauses. Likewise, attention is requisite entering, executing and performing the home inspection including the statements or information provided.

9.9. Risk Management Summary

To summarize the risk management approach for home inspectors, there are several factors that can be analyzed, and countermeasures can put in place to reduce risk. These factors were best summarized in a presentation in December 2002 where one of the major professional insurance providers for The American Society of Home Inspectors (ASHI) 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.*²⁷

10. 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.

According to the Occupational Standards²⁸, the title professional home/property inspector refers to a professional who uses their training, experience and professionalism to report 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.

²⁷ (Source: <http://www.arizona-ashi-home-inspection.com/10CommonClaims.pdf>
Business Risk Partners – Providers of the American Society of Home Inspectors Endorsed Program)

²⁸ See *Occupational Standards: Professional Home/Property Inspector*. May 2001. Copies available through CAHPI national office.

The Occupational Standards indicate that many professional home/property inspectors do more, such as the inspection of small (under 600 square metres) commercial buildings, conducting pre-renovation consultations and identifying problems related to the structure or condition 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 in 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 communication 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 litigation²⁹.

In reviewing a number of the insurance claims against home inspectors, the “Occupational Standards for Professional Home/Property Inspector” were reviewed. 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 on actual inspection situations encountered by experience and the Standards were developed 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.

²⁹

Occupational Standards for Professional Home/Property Inspector May 1st, 2001. Page vii

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 that 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. Once detected, the inspector has an obligation to report the defect and to provide their client with the implications of the defect.

However, based on the interviews, it was clear there were concerns with respect to the content of courses provided and their consistency with the Standards, especially those courses given by associations.

11. 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 rather than 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 ensure that no gaps exist. It will also help in terms of establishing an overall risk management mandate for the sector.

12. 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. Many home inspectors are dependent upon realtors for referrals. Sometimes home inspectors feel pressured to dilute and downplay the significance of problems discovered during an inspection.

Real estate agents frequently refer inspectors who will be more likely to downplay a significant problem. It is not necessarily a bad thing that realtors refer home inspectors, as long as they are referring at least three home inspectors with professional certification. However, it would be fairer for all qualified home inspectors to have fair and equal access to potential clients since there is an inherent conflict of interest in agents referring home inspectors.

A purchaser is not necessarily protected when there is a business relationship between a 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 inspections³⁰.

³⁰

(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 there are 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.

12.1. Standard of Care

The standard of care applicable to a home inspector is the same as that 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 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 varies according the level of risk accepted between the home inspector and the client.

12.2. Raising The Bar

The national initiative between the home inspection sector and the municipal building officials in Canada resulted in "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, training, certification (of members) and accreditation (of courses and programs) 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.

13. Conclusions

The topic of “errors and omissions insurance” has become a very hot topic with home inspectors. Premiums have continued to rise and the underwriting standards have become significantly tougher. This has created a two-tiered system in which inspectors in some home inspection associations are insured and some are not. Most provincial associations have a mandatory errors and omission insurance requirement for their practicing members.

At the time of this report, fewer companies are available to insure home inspectors for errors and omissions. This is forcing a significant change in the Canadian home inspection market, which may result in a large number of home inspectors leaving the profession. This could influence insurance claim rates in the future, or reasonable and timely accessibility to a home inspector.

The analysis of claims, the review of documents, and the interviews conducted have shed light on the nature of the complaints. Although many of the insurance claims are regionally based, the incidences also apply to other regions, and give the industry information it can use to ensure that it is proactive to deal with potential future claims.

There is no doubt that concerns with consumer complaints and potential lawsuits have created an “insurance crisis” for this sector. This crisis, even though created by only a few inspectors, unfortunately has had an impact on the industry. However, the home/property inspection sector is young in terms of a “professional” occupation and with proper leadership, should be able to overcome this crisis.

14. Recommendations

The following recommendations are suggested for the home/property inspection sector to address concerns with errors and omissions insurance and to reduce complaints and claims against HPIs.

Survey

1. Conduct a survey to determine how HPIs (members and nonmembers) currently respond to complaints.

Training/Education

2. Provide mandatory courses that focus on water infiltration for foundations and roofs, and report writing courses, that could be taught and provided by colleges or accredited institutions. These courses are of a particular interest because of the legal actions in these areas.
3. Establish an independent committee to critically review the courses provided by the provincial associations for its members. Some of the key questions the committee should examine are as follows:
 - a. To what extent should the provincial associations be in the business of providing courses?
 - b. To what extent are these courses meeting the general principles of adult learning (e.g., clear learning objectives, evaluation)?
 - c. To what extent should the provincial associations only provide workshops or information sessions rather than courses?
 - d. To what extent should provincial associations work with community colleges and accredited institutions to provide training?

Standards of Practice

4. Revise standards of practice to clearly state that the client must sign the contract before conducting an inspection. If the contract is not signed prior to inspection, this should null and void the insurance.
5. Develop a standard document for the client that explains the role of the HPI and what they will focus on during the inspection. This document needs to be signed by the client prior to the inspection to

ensure that the client is aware of the role of the HPI. The standard document should be national in scope.

6. Revise standards of practice to reflect the national occupational standards.
7. Update the national occupational standards to ensure that the core competencies and knowledge truly reflect the business. For example, some inspectors were sued for inspecting fireplaces and the national occupational standards exclude this activity.
8. Develop a national standard of practice under the banner of Canadian Association of Home and Property Inspector (CAHPI) and no longer use American Society of Home Inspector (ASHI) practices.

Contracts/Agreements

9. Establish a committee to develop a model standard agreement for the industry. The model standard agreement should be approved by the industry and reflected in their bylaws. A lawyer should also review the model agreements for applicability to each provincial jurisdiction.

Risk Management

10. The industry should introduce a risk management strategy. This includes focusing on
 - A Written Report
 - Vendor Disclosure Statement
 - Summary of Defects
 - Digital Documentation
 - Dispute Resolution
 - Clear Standards of Practice
 - Standardized Contracts
11. The industry should establish a subcommittee to look at these issues and identify other risk management strategies.
12. The industry should establish a committee to examine the option of having the government regulate the industry or for the sector to

establish a self-regulatory framework, which would form part of the risk management strategy.

Consumer Advocacy

13. Establish consumer protocol that includes:

- The consumer signing off on a document that explains the role and scope of home inspectors
- The consumer signing the contract prior to the inspection
- Posting a sample contract on the website
- Ensuring that the client is present during the inspection, or that a reliable replacement is provided
- The home inspector taking pictures of issues that may be of concern
- Revising the national and provincial websites to inform consumers of this new protocol

Adopting these recommendations and continuing to make progress on national initiatives, particularly with respect to certification, will reduce the number of complaints and insurance claims. Taking action on the recommendations will improve the home inspection profession significantly and will reduce the risk to members of the profession and to the consumers they serve.

APPENDIX A

QUESTIONNAIRE

Name: _____ Date: _____

INTRODUCTION

CMHC, in partnership with CAHPI, is conducting a study on insurance claims, jurisprudence and other documentations as they relate to performance of the home inspection sector. Most importantly, the insurance study will critique the insurance claims and jurisprudences in relation to the national occupational standards to identify any potential gaps in training to reduce insurance claims. As part of this study, it is important that interviews be conducted with key individuals who are viewed by the industry as “experts” or very knowledgeable regarding home inspections and insurance claims.

BACKGROUND

1. How many years have you operated as a home inspector?
2. Do you currently hold any certificates or diplomas that have supported your occupation as a home inspector?

INSURANCE CLAIM QUESTIONS

1. As you know the home and property sector have had a difficult time obtaining insurance coverage for errors and omissions, what reasons would you give as to why this sector is having difficulties in maintaining insurance?
2. You are being interviewed because the industry have viewed or suggested that you are an “expert” in providing testimony in court cases. Based on your experience, can you provide information on the following?
 - a. The nature of the claim? (e.g., wet basements)
 - b. Can you rank the claims in order of the most items that an inspector is being sued?
 - c. The reasons for the claim. For example, who do you believe is at fault?
 - d. Can you provide any insight as to whether the home inspector was recommended by a real estate agent or by the client?
 - e. Can you provide any insight as to whether the client was available during the inspection or only received a copy of the report?
3. Can you provide some insight as to the profile of the inspector by answering the following questions:
 - a. Has the inspector been working as a home inspector for several years or is he/she viewed as being new to the industry?

- b. Has the inspector taken all the courses as recommended by the provincial association?
 - c. Is the inspector qualified to provide the inspections?
- 4. Based on the insurance claims being filed, it has been argued that there is a “gap” in the existing curriculum or training courses. More specifically what are your views to the following:
 - a. Are the existing report writing courses suitable?
 - b. Are the existing courses to detect water suitable? Why are you specifying only water?
 - c. What other courses would you revise or introduce in order to avoid any potential insurance claims?
- 5. In your view, what should the home inspection sector do to minimize the number of insurance claims? For example, would you suggest standardized contracts?
- 6. What other comments do you have that would be insightful to this study?

APPENDIX B

OAHI Model Contract - Discussion Draft Only

This model contract was synthesized from the elements of contracts submitted in September 1997, for the exclusive information of all OAHI members. Members are cautioned to obtain independent legal review of their own contracts and these clauses before use.

(Name of home inspection company)

Agreement for Home Inspection Services

Please read this agreement carefully

Name of client:

Address of inspected home:

Date of inspection:

Fee for inspection services: General inspection: \$_____ Other (Specify) \$_____
GST \$_____ Total \$_____

This agreement made this _____ day of _____, 19____ by and between
_____ [Name of Company] (hereinafter called the "Company") and
_____ [Name of Client] (hereinafter called the "Client").

1. The Company agrees to perform a visual inspection of the subject house and to provide the Client with a written inspection report identifying the visually observable major deficiencies. Structures detached from the house are not inspected unless otherwise expressly agreed. The fee for extra services are set forth above. The items included for inspection are the following:

(Insert summary of what is included for inspection by your company)

2. The inspection and report will be performed in accordance with the current Standards or Practice (the "Standards") of the Ontario Association of Home Inspectors ("OAHI"). A copy of these OAHI Standards are available upon request at any time including before the signing of this Agreement. The Client understands and agrees that these OAHI Standards are a part of and are included in the terms and conditions of the inspection.

3. The inspection and report are performed and prepared for the sole, confidential and exclusive use and possession of the Client. The Report is non-transferable. The Client agrees to indemnify and save harmless the Company from any damages arising out of claims against the Company by third parties to whom the Client has released the Report in contravention of this Agreement.

4. The inspection only includes those items and systems expressly and specifically identified here and in the, provided inspection report. Maintenance and other items may be discussed, and some less than major defects noted as a courtesy to the Client, but they are not within the required scope of the inspection. Among those conditions, items and systems **NOT** included in the inspection are the following:

(Insert summary of what your company does not include in the inspection)

5. This inspection will be of readily accessible areas of the house and is limited to visual observations of apparent conditions existing at the time of the inspection only. Furthermore, conditions which change after the time of the inspection, are not included in the Report. In addition, deficiencies and defects which are latent or concealed are excluded from the inspection; the inspection is not intended to be technically exhaustive. Equipment, items and systems will not be dismantled. The inspection and report is **NOT** a conformity or compliance inspection for governmental codes or regulations of any kind. The inspector is not required to move personal property, debris, furniture, equipment, carpeting, or like materials which may impede access or limit visibility. Recent and existing weather conditions may also limit or restrict the results of the

inspection. The Company may indicate an item or systems life expectancy but such estimates are general in nature, should not be relied upon, and the actual life, performance may vary widely. The Company urges the Client to contact the owner of the inspected property to learn to the age of such items as the roof and any recent problems or known defects in the property.

6. The inspection and report do not address and are not intended to address the possible presents all of or danger from asbestos, radon gas, lead paint, urea formaldehyde, soil contamination and other indoor and outdoor pollutants, toxic or flammable chemicals, water or airborne related illness or disease, and all other similar or potentially harmful substances. The Client is urged to contact a competent specialist if information or identification or testing of the above is desired. In addition, the presence or absence of rodents, termites and other insects are also not covered by this inspection.

7. The parties agree that the Company, in its employees and agents, assume no liability or responsibility for the cost of repairing or replacing any unreported defects or deficiencies, either current or rising in the future, or for any property damage, consequential damage or bodily injury of any nature. **The inspection and report are not intended to be used as a guarantee or warranty, expressed or implied, or insurance policy regarding the adequacy, performance or condition of any inspected structure, item or system.** The inspection report is also not a certification of any kind. **The parties further agree that the maximum liability of the Company and its employees and agents, for errors and omissions during the inspection or contained in the report shall be limited to a sum equal to the Company's fee for the inspection service.**

Client's Initials _____

8. The Company shall not be construed as insuring against any defects or deficiencies, not contained in the inspection report and subsequently discovered by the Client. The Client acknowledges that the inspection cannot completely assess risk, detect all flaws or predict all occurrences and further acknowledges and agrees that, in the event that the Client purchases the inspected property, the Client assumes all risks associated with the purchase.

Client's Initials _____

9. If any paragraph, clause, sentence or other part of this Agreement is for any reason held to be invalid or unenforceable in any respect, such a decision shall not affect the remaining portions of this Agreement, which shall continue in full force and effect.

This Agreement represents the entire agreement between the parties and supersedes all previous communications. There are no oral representations or warranties of any kind. No change or modification shall be enforceable against any party unless such change or modification is in writing and signed by the parties. This agreement shall be binding upon and enforceable by the parties, and their heirs, executors, administrators, successors and assigns.

The above is understood and agreed to:

Client

Client

For Company Specify the name of the Company

APPENDIX C

STANDARD CONTRACT

THIS CONTRACT AFFECTS YOUR LEGAL RIGHTS

- PLEASE READ CAREFULLY BEFORE SIGNING -

THIS PROPERTY INSPECTION CONTRACT (the "Contract") made this _____ day

of _____ 200_ between:

Client Name:

Mailing Address:

Telephone number - Home:

Business: Fax:

(the "Client")

AND

(the "Inspector")

in relation to property located at:

(the "subject property")

THE CLIENT AND THE INSPECTOR ACKNOWLEDGE AND AGREE AS FOLLOWS:

(1) The Client hereby requests that the Inspector perform an inspection of the Subject Property and prepare a written report thereof subject to the following limitations and conditions, each of which are acknowledged, understood and accepted by the Client;

1 The inspection shall be performed in accordance with the Standards of Practice of the Canadian Association of Home & Property Inspectors (BC), a copy of which is attached hereto as Schedule "A" and initialed by the Client;

2 The Inspection Report constitutes an opinion of the Present Condition of the property based on a visual inspection of the readily accessible and visible major systems, components and equipment of the Primary Residence on the Property;

3 The inspection and Inspection Report **do not** constitute a guarantee, warranty or an insurance policy;

4 The Client is encouraged to participate in the visual inspection process and accepts responsibility for the consequences of electing not to do so, ie incomplete information being available to the Inspector. The Client's participation shall be at the Client's own risk for injuries, falls, property damage, etc.;

(Initials) _____

5 The condition of certain systems, components and equipment will be randomly sampled by the Inspector. Examples of such systems, components and equipment are window/door operation, hardware and screens, electrical receptacles, switches and lights, cabinet/countertop mounts and functions, insulation depth, mortar, masonry, paint and caulking integrity and roof covering materials;

6 Weather conditions may limit the extent of the inspection process; the Client hereby releases and waives any claim it may have against the Inspector for omissions or inaccuracies in the Inspection Report arising as a result of weather conditions existing at the time of inspection;

7 The Inspection Report is for the confidential use of the Client only and will not be disclosed to third parties such as real estate agents, sellers, or lenders without the express written consent of the Client. The Client shall protect and indemnify the Inspector from and against any claim against the Inspector by any such third party arising from disclosure of the Inspection Report thereto; The Client authorizes the Inspector to disclose the Inspection Report to third parties Yes_____ No_____

8 The Client and the Inspector hereby agree that all disputes arising in relation to the inspection and Inspection Report shall be referred to and resolved by binding arbitration pursuant to the applicable legislation governing commercial arbitrations;

9 In the event that the Client claims damages against the Inspector and does not prove those damages, the Client shall pay all legal fees, arbitrator's fees, legal expenses and costs incurred by the Inspector in defense of the claim;

10 The Inspector shall not be liable to the Client for the cost of any repairs to or replacement of any system, component, or equipment undertaken by the Client without prior consultation with the Inspector;

11 The Inspector's total liability to the Client for mistakes, errors or omissions in the Inspection and Inspection Report shall be limited to the amount of the fee paid for the Inspection.

(2) The fee payable at the time of the visual inspection of the Subject Property shall be as follows:

Base Fee:

\$ _____

Fee for Additional Services described on
Schedule "B" hereto:

\$ _____

GST:

\$ _____

Travel:

\$ _____

Postage:

\$ _____

TOTAL:

\$ _____

(Initials) _____

(3) By signing this Property Inspection Contract the Client acknowledges, covenants and agrees that:

1 The Client understands and agrees to be bound by each and every provision of this Contract;

2 The Inspector has not made any representations or warranties other than those contained in this Contract;

3 The Client has had such legal advice as the Client desires in relation to the effect of this Contract on the Client's legal rights;

4 The Client shall pay the fees herein before described to the Inspector without set-off or deduction.

(4) Time limits for legal action:

(5) The client acknowledges and agrees that the time limit for commencement of legal proceedings by the client against the Inspector for damages suffered by the client as a result of alleged negligence or breach of contract by the inspector shall be not later than one (1) year from the date of the inspection reports herein before described. From and after the expiry of one (1) year from the date of the said inspection report any claim of the client against the inspector and or the

inspectors' employees, agents and servants arising from or in relation to this contract and or the services provided hereunder shall expire and cease to exist for all purposes and the clients right to commence proceedings against the inspector and or the inspectors employees agents and servants shall thereupon be barred and cease to exist for all purposes.

Client's signature: _____ Witness: _____

Inspector's signature: _____ Witness: _____

Company: _____

© 2001 Canadian Association of Home & Property Inspectors (BC)

(Initials) ____ ____

Visit our home page at www.cmhc.ca