Alberta Court of Appeal clarifies the scope of pure economic loss in construction negligence claims

October 01, 2026

The Alberta Court of Appeal has provided important guidance on the treatment of pure economic loss claims arising from construction defects. In *Murray v Windsor Brunello Ltd*, 2026 ABCA 275, the ABCA confirmed that courts must distinguish between claims involving negligent supply of defective structures and claims involving negligent performance of professional services, as each attracts a separate duty of care analysis.

What you need to know: Pure economic loss claims arising from construction defects

This decision reinforced three important principles:

1. Pure economic loss is not a single doctrine. Courts must identify the category of pure economic loss at issue and apply the corresponding analytical framework.
2. The “real and substantial danger” requirement remains central to defective structure claims, but it does not govern claims for negligent performance of professional services.
3. Contract and tort duties may coexist. In the absence of contractual language limiting tort liability, professionals may face concurrent liability in both contract and negligence, for the same underlying conduct.

Background

This dispute arose from the construction of a custom residence in Wheatland County, Alberta. The homeowners alleged that deficiencies in the design and installation of large window and sliding door systems caused structural deflection, resulting in doors that became increasingly difficult to operate, and ultimately failed to function as intended. They brought their claim in contract and negligence.

Following trial, the homeowners obtained judgment of over $958,000, including pre-judgment interest, against the project and construction manager for breach of contract. However, the trial judge dismissed the negligence claim against the engineering

consultant, finding that the losses constituted pure economic loss and the defects did not create the type of “real and substantial danger” required for recovery under the “defective structures” branch of negligence law.

Alberta Court of Appeal decision

The ABCA agreed that the homeowners’ defects claim involving the house itself constituted a claim for pure economic loss rather than ordinary property damage. Applying the Supreme Court of Canada’s decision in *Winnipeg Condominium Corp No 36 v Bird Construction Co*, the ABCA held that where one component of a complex structure adversely affects another component of the same structure, the resulting repair costs are a pure economic loss recoverable in negligence only if the defect creates a “real and substantial danger”.[1] The ABCA further held that the trial judge correctly concluded that the deflection of the residence’s doors and windows did not create a “real and substantial danger”. Therefore, no duty of care arose under the category of negligent supply of a defective structure.

However, the ABCA determined that the analysis should not have ended there. The homeowners had also advanced a claim against the engineering consultant for negligent performance of professional services – a distinct category of pure economic loss. The ABCA emphasized that claims for negligent performance of a service turn on undertaking, reliance, proximity, and foreseeability rather than the “real and substantial danger” test applicable to defective structures.

The ABCA found that the trial judge expressly determined that the engineering consultant undertook to provide engineering services to the homeowners, which the homeowners reasonably relied on. The trial judge also found that injury to the homeowners was reasonably foreseeable. These findings established the necessary proximity and foreseeability for a duty of care.

Importantly, the ABCA rejected the proposition that the existence of a contractual relationship precluded a negligence claim. Relying on *BG Checo International Ltd v British Columbia Hydro and Power Authority* and subsequent case law, the ABCA confirmed that there is no general prohibition against concurrent liability in contract and tort.[2] Tort claims may be limited or excluded by contractual terms, but, absent such limitations, both causes of action may coexist.

The ABCA concluded that the trial judge erred by importing the defective structures analysis into the negligent performance of services claim. The two categories are not mutually exclusive and must be analyzed independently. Because proximity and foreseeability were established on the facts found at trial, the engineering consultant was liable for negligent performance of professional services.

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Footnotes

[1] *Winnipeg Condominium Corp No 36 v Bird Construction Co*, [1995] 1 SCR 85 at paras 15-22.

[2] *BG Checo International Ltd v British Columbia Hydro and Power Authority*, [1993] 1 SCR 12 at 17.

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