



**Odette School
of Business**
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Engagement Letters: A Risk Minimization Measure

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Executive Summary

This report focuses on the analysis of an engagement letter for the provision of auditing services agreed to by a prominent public accounting firm and the Corporation of the City of Windsor. My choice was primarily influenced by my pursuit of a career as a professional accountant. I am also particularly interested in exploring the issues surrounding the legal liability of auditors.

The subject of liability is indeed repeatedly touched upon throughout my analysis; beginning with the contract structure framework analysis, the presence of almost as many acknowledgments and representations as rights and obligations in the agreement is to some extent indicative of the risk minimization function of engagement letters.

This concept extends further. In the context of an audit engagement, two main business priorities of the auditing firm have been identified: management of the engagement risk, and benefiting from continuance of the engagement. While some of the most relevant business risks for the auditing firm are the lack of appropriate competency or resources during the audit, breach of independence requirements, and insolvency of the client, the main risk consists of litigation and the costs thereof. On the other hand, the Auditee's main interest is to ensure the Auditor has the necessary competence and resources to complete a quality audit; interest which is most often addressed by negotiating comprehensive and unambiguous obligations on the part of the Auditor.

The core of this analysis is a consideration of the concept of duty of care and third party reliance on the Auditor's work, and the identification of strategies available to the Auditor to limit his or her liability in this context of extended responsibility. The contentiousness of the provision contained in the agreement regarding the use and distribution of the Auditor's report has been highlighted; in particular, the clause, as was presented, was quite limited in scope and as such represented a restriction of the risk minimization potential of this type of provision.

A comparative analysis of several engagement letters drafted by the leading public accounting firms in Ontario constitutes the basis of my discussion on the negotiating position of the parties to the agreement. A strong imbalance of power in favor of the Auditor has been identified, with most engagement letters resembling standard form contracts in the striking similarity of their form regardless of the issuing firm, and the apparently minimal negotiating power of the Auditee. Nonetheless, several negotiable elements have been outlined, among which are improvements or establishments of provisions governing termination, indemnification, timely performance, auditor's deliverables, and the use and distribution of the Auditor's report.

This last element was the subject of the proposed amendments, which focused on enhancing the protective characteristics of the engagement letter, in reflection of generally accepted auditing practice, which was once more considered by reviewing a collection of actual engagement letters.

A conclusion on the merits of this course follows the analysis by drawing upon the most important learning points according to my personal experience: the importance of context, understanding trade-offs, the significance of termination clauses, the relevance of letters of intent, and the importance of assessing the impact of individual changes on the agreement as a whole.

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Reasons why I chose this contract for study

This analysis focuses on an Engagement Letter between the Corporation of the City of Windsor and KPMG LLP. The form of engagement letter which is the subject of my study is an agreement between a public accounting firm and a client, specific to the provision of auditing services.

The desire to learn about this type of agreement arises primarily from my choice to pursue a career as a Chartered Professional Accountant. I am interested in learning how to draft a proper retainer agreement which may serve as a solid basis to carry on good quality and clearly agreed upon work, and to avoid the so-called expectation gap that often dominates client-professional relationships.

In 2006, CA Magazine published an article titled “Like appetizer and dessert”. In this article, the authors attempt to explain the newly introduced professional requirements regarding engagement letters by comparing such agreements to an appetizer: just as the appetizer “is the start of a good meal”, the engagement letter is “the start of a good working relationship and helps avoid misunderstandings regarding what the audit is about, what it is meant to accomplish, what [the auditor is] responsible for, what [management is] responsible for”.

This depiction of engagement letters as a means to minimize the inherent risks of Auditor-Auditee relationships reflects a different motivation that compelled me to analyze this type of agreement: I am interested in investigating how these agreements accomplish their risk-minimization objective. This understanding becomes even more critical when considering cases such as *Livent Inc. (Receiver Of) V. Deloitte & Touche*. This case, still fervently discussed today after the latest ruling by the Court of Appeal of Ontario, has resulted in directors and officers of the company charged with criminal fraud for misrepresentations made in the financial statements as well as three auditors of Deloitte disciplined by the Discipline Committee of the Institute of Chartered Accountants of Ontario for failure to conform to professional standards in conducting their audit.

Many similar cases have been debated in the press and in business academia. The auditors’ opinion reduces the information risk intrinsic to financial reports, thus it is extremely valuable to many parties, including investors, suppliers, regulatory agencies and governmental and financial institutions. This is the main reason why many different parties seem to have claims against the auditors of a company when business failure takes place.

As a business student who often reflects on ethics and morality in the business world, I find the discussions about the extent of responsibility of the auditors of companies involved in various financial scandals to be extremely interesting. This also relates to my interest in the legal liability of the professional. The current accounting and auditing standards do not address the legal liability of management and accountants to each other, but focus rather on the steps required to perform what the Canadian Auditing Standards define as a ‘quality audit’. Thus, the engagement letter seems to be the most important tool to limit legal liability for both parties. As such, it encompasses all the issues and dilemmas I feel drawn to examine, and it represents the perfect focus for my analysis.

Contract Structure Framework applied

Identification of the Parties: KMPG LLP (Auditor), Corporation of the City of Windsor (“the Entity”, Auditee).

The agreement is effective: upon signature and delivery of the engagement letter to the Auditor

■ Bargain	■ Exchange	■ Term
<p>What are the parties exchanging? What value is given and received by each party? D(a), E(b), G</p> <p>Money? Goods? Services? Property Rights?</p>	<p>What is the manner and mechanics of the exchange?</p> <p>Describes how payment, exchange or service will be performed. D(b-c), E, H.9</p>	<p>What is the period of time that the parties are obligated?</p> <p>Can contract be terminated early? How can it be ended & under what conditions?</p>
■ Statements	■ Conditions	■ Obligations (Covenants)
<p>What facts are material to the bargain?</p> <p>Representations express material assumptions relied upon by parties when making the agreement: B, signature elements (“Nick [...] body”), H.3, H.5, H.6, H.12</p> <p>Acknowledgements express facts and circumstances that parties accept and agree not to contest: A, C(a-c), E(a), F, H, H.8, H.9, H.10, H.13</p>	<p>What actions, facts or circumstances must occur or exist before a party’s performance is required?</p>	<p>What actions or forbearances must each party continue to perform during the term of the agreement? C(d-g), D(b-c), Appx. C, H.4, H.5, H.6, H.7, H.9, H.10, H.12, H.13</p>
■ Rights	■ Remedies	■ Resolution & General
<p>What actions can the parties take to protect their interest in the bargain? C(d-g), D(b-c), Appx. C, H.4, H.5, H.6, H.7, H.9, H.10, H.12,</p>	<p>What can the parties do in the event the other does not perform its obligations? H.9.</p> <p>What consequences follow non-performance & consequences if representations prove to be untrue?</p>	<p>How are disputes resolved? H.1, H.2, H.11, H.14.</p> <p>For example, define the “law” of the agreement including its scope, adjudication and interpretation</p>

Description of Business Priorities and Risk Analysis

Auditor's Priorities – The main business priority of the auditing firm is to ensure the continuance of the engagement to accrue benefits in terms of financial gain and enhanced prestige resulting from being associated with the client. These elements are addressed in Sections G and H.9 of the agreement. On the same level of importance, the Auditor is interested in managing the risk of the engagement in order to keep it at an acceptable level. Risk assessment and response procedures are entwined in professional standards, and are most often accomplished by ensuring that:

- (1) The firm complies with independence requirements, as addressed by Sections F, H.7, and H.9 of the engagement letter;
- (2) The engagement preconditions have been met, particularly the financial statements have been properly compiled, as Section B highlights, and management has acknowledged their responsibilities, which is the purpose of Section C;
- (3) To the extent permitted by the law, the firm has limited its liability. Although the litigation history of the client is usually investigated, it is still a priority of the auditor to address this issue. This is apparent, to some extent, throughout the agreement.

Entity's Priorities – The main priority of the Auditee is to engage a firm with the competencies and resources necessary to perform a quality audit. It is in the interest of the Entity to agree on deliverables (as in Section E), time constraints, and general responsibilities of the Auditor. Another priority of the Auditee is to obtain feedback useful in identifying potential improvements. This is, to some extent, addressed in Appendix C of the agreement, although it seems to reflect the priority of the Auditor to comply with professional standards relative to matters to be communicated rather than focusing on the Entity's interest in receiving recommendations. There may also be concerns about fees, as audit engagements have traditionally been costly and many practitioners use low-balling as a strategy in engagements which cover multiple years.

Auditor's Risks – Traditionally, the main risks for the auditing firm were either the discovery of a lack of appropriate competency, time or resources during the audit, an undetected breach of the independence requirements of audit engagements, and/or insolvency of the client. These risks are still very relevant, and are addressed to some extent throughout the agreement. However, in today's post-Enron environment, the erosion of the public's trust in auditors has caused a shift in business risks. The main risk for the Auditor is now litigation and the costs associated with it, including the indirect costs of the loss of reputation and the increased rates of professional liability insurance.

Entity's Risks – The primary risks for the Entity are audit failure and the costs associated with it. Audit failure may happen for a number of reasons: incompetency of the auditing team, unethical behavior and/or collusion between the auditors and management, and/or negligence by the Auditor. These are all concerns for the Auditee. Clearly identifying the Auditor's obligations in the agreement, as in Sections D, E, and Appendix C, may help mitigate these risks. Another substantial risk is the loss of confidentiality, which is addressed primarily in Section H.10.

Identification of a Contentious Term worthy of Negotiation

H.8 OFFERING DOCUMENTS.

If the Entity wishes to include or incorporate by reference the financial statements and our report thereon in an offering document, we will consider consenting to the use of our report and the terms thereof at that time. Nothing in this Engagement Letter shall be construed as consent and KMPG expressly does not consent to the use of our audit report(s) in offering documents. If the Entity wishes to obtain KPMG's written consent to the use of our audit report(s) in an offering document, or wishes us to provide a comfort or advice letter, we will be required to perform procedures as required by professional standards; any agreement to perform such procedures will be documented in a separate engagement letter. Management agrees to provide us with adequate notice of the preparation of such documents.

Auditors, as any professional, may be liable in contract and in tort, if a person to whom they owed a duty of care has relied, to her detriment, on their misrepresentation negligently made. Although a practitioner always owes a duty of care to her clients, that duty is usually related to the contractual relationship between the parties. The Chartered Professional Accountants of Ontario rules of professional conduct also recognize that the practitioner may be found to be in a fiduciary relationship with his or her client. However, tort liability extends the duty of care to third parties who may rely on the auditor's judgement where the reliance by the third party was reasonable. This creates a situation where, in the eyes of the law, the professional should have foreseen that the third party would reasonably rely on his or her work, and should have exercised his or her skills accordingly.

The issue of indeterminate liability, whereby the public policy concern of assigning an almost limited liability to professionals caused the courts to restrict the duty of care owed, is now being challenged in new legal developments which are moving towards the opposite direction of expanding the liability of auditors. The latest of such developments is the case of *Livent Inc. (Receiver Of) V. Deloitte & Touche*, previously mentioned among the reasons for my choice of this engagement letter as my agreement for analysis.

There may still be strategies that Auditors can take to reduce their exposure to the claims of third parties, and this provision reflects one of such strategies: limiting the circulation of the Auditor's work or the use which is made of it.

The current wording of this provision is reasonable in that it does not completely preclude the possibility for the auditing firm to consent to include the Auditor's report in offering documents. This section also provides for consideration by the firm of the need of the Entity to be serviced with comfort or advice letters. However, the clause is drafted in a way that prohibits the Entity from unilaterally using the work of the Auditor for the purposes mentioned above. Moreover, the Entity has the obligation to provide adequate notice where the need for additional services or uses of the report arise. The main significant issue with this provision is its limited scope, seeing that it only governs offering documents and the provision of comfort and advice letters, whilst many others uses of the Auditor's report are possible and should be addressed for maximum protection.

Analysis of negotiation positions of each Party

A comparative analysis of several engagement letters proposed by the leading public accounting firms practicing in Ontario has provided me with evidence supporting the argument that there exists a marked imbalance of bargaining power, with all aforementioned firms proposing engagement letters which strikingly resemble standard form contracts, and provide the Auditee with very few opportunities for negotiation. The Engagement Letter under study is, in some aspects, less demanding of the Auditee than most agreements of this kind which I have analyzed. For this reason, and considering the continuous nature of the relationship between the parties, I was able to identify a number of negotiable issues, as follows:

Auditor's Negotiating Interests:

(Section A)

One frequent mistake made by parties in drafting business agreements is the reiteration of the same concept in a way that creates ambiguity, most often because of different wording or treatment of the same issue in different sections of the agreement. The agreement under analysis effectively consists of two parts: the engagement letter, and the incorporated Terms and Conditions. It is in the interest of the Auditor, more than the Auditee, to specify that in the case of any conflict arising between the attached Terms and Conditions and the specific terms and conditions set out in the engagement letter, specific terms and conditions tailored to the Entity shall apply.

(Section H.8) Use, Distribution and Publication / Reproduction of Auditor's Report

A common strategy used by practitioners to limit third-party liability is to maintain control over the use and distribution of the report. It is in the interest of the auditing firm to emphasise that the report is solely for the use of the Entity and those to whom the report is specifically addressed by the auditing firm. Auditors are aware that most organizations will need to reproduce the report for one purpose or another, but they will want to be informed when such need arises, and ideally they have the right to review the publication before it is issued. If such a provision is not contemplated, the door is open for any third party to pose claims against the Auditor. Section H.8 does not thoroughly address this issue.

(Section to be added) Indemnity

Of the five dominant public accounting firms sampled for this analysis, all of them presented an indemnification provision in their engagement letters. Moreover, two out of five firms also included limitation of liability clauses in their audit engagement agreements. This reflects the auditing firms' awareness of the substantial risk of litigation. The Auditor is particularly interested in negotiating indemnification arising out of misrepresentation by members of the Entity. Canadian Auditing Standards, specifically CAS 210, and the Canadian Professional Engagement Manual (CPEM) also recognize the possibility for the Auditor to include indemnification clauses in the engagement letter.

(Section to be added) Internet Communications

In virtually all engagements, Auditors and Auditees exchange communications in electronic form. It is wise for the auditing firm to recognize the possibility of such transmissions to be intercepted, corrupted, lost, destroyed, or otherwise be adversely affected or unsafe to use. The Auditor will seek to have the Entity acknowledge that they not be held liable for any loss or damages arising from or in connection with the electronic communication of information to the Entity. This can be especially important when the Entity is, as in the case under analysis, one of public relevance.

One way to ease acceptance of this provision on the part of the Entity would be to outline an obligation of the auditing firm to provide a hard copy, instead of proceeding with electronic transmission, of any piece of information which in the sole discretion of the Entity may be reasonably deemed to contain sensitive data, upon request by the Entity.

Entity's Negotiating Interests:

(Section to be added) Termination

This agreement presents a common mistake made by parties to business contracts: it fails to provide for procedures governing a breakdown of the business relationship. It is very much in the interest of the Entity, considering the business priorities discussed on page 6, to be able to terminate the engagement should the Auditor not fulfill its responsibilities to the Entity. Including this provision can help minimize the financial impact of the engagement and avoid non-compliance with regulations if an Auditor change is needed and the Entity is under time constraints. It can also protect the Entity from a claim for breach of contractual obligations.

Naturally, the auditing firm may want to negotiate a similar provision granting it the right to terminate the agreement in certain circumstances. Although resignation from audit engagements in specific circumstances is prescribed by professional standards, including such possibility in the agreement is crucial to avoid future claims.

(Section E) Auditor's Deliverables

Two considerations relative to this Section are extremely important to the Entity, and generally to most Auditees: obtaining an unqualified audit report, and ensuring constant communication with the auditing firm to minimize the risk of audit failure. In this context, the Entity will want to negotiate an obligation for the Auditor to inform the Entity where a modification to the Auditor's opinion is necessary, and discuss the reasons of such requirement with the Entity in advance.

(Section G) Fees and Timely Performance

The Entity may sustain financial losses for failure to issue the financial statements in a timely fashion. As the Auditor's report is filed together with the statements, timely performance is of the essence. The Entity will want to ensure this is emphasised in the agreement, with a provision obligating the auditing firm to use all reasonable efforts to complete the performance of the services described in the Engagement Letter within any agreed upon time frame.

Suggested Amendments to the contract

H.8 OFFERING DOCUMENTS USE, DISTRIBUTION AND PUBLICATION/REPRODUCTION OF OUR REPORT.

(a) The examination of the financial statements and the issuance of our audit opinion are solely for the use of The Corporation of the City of Windsor and those to whom our report is specifically addressed by us, for the purpose of assisting the Council in holding itself and its administrators accountable for the quality of stewardship over public funds and for the achievement of value-for-money in City operations. We make no representations of any kind to any third party in respect of these financial statements and we accept no responsibility for their use by any third party.

(b) We ask that our name be used only with our consent. Any information to which we have attached a communication shall be issued with that communication unless otherwise agreed to by us. If reproduction or publication of our report is planned in an annual report or other document, including electronic filings or posting of the report on a website, a copy of the entire document shall be submitted to us in sufficient time for our review before the publication or posting process begins.¹

(c) If the Entity wishes to include or incorporate by reference the financial statements and our report thereon in an offering document, we will consider consenting to the use of our report and the terms thereof at that time, upon the Entity providing us with adequate notice of the preparation of such documents.² Nothing in this Engagement Letter shall be construed as consent and KPMG expressly does not consent to the use of our audit report(s) in offering documents. If the Entity wishes to obtain KPMG's written consent to the use of our audit report(s) in an offering document, or wishes us to provide a comfort or advice letter, ~~we will be required to perform procedures as required by professional standards;~~³ any agreement to perform such procedures will be documented in a separate engagement letter. ~~Management agrees to provide us with adequate notice of the preparation of such documents.~~²

¹Following my analysis of Section H.8 on page 7 of this report, one of my proposed amendments consists in restricting the circumstances where the Auditor's report may be used, published, or reproduced. It also specifies the exact purpose for which the report is intended. The language presented above is very commonly found in actual practitioners' engagement letters, reflecting the importance of such change in the context of limiting the Auditor's liability to third parties.

²These elements have been amended for clarity, specifically to unequivocally connect the Auditor's consideration of giving consent with the obligation of the Entity to provide adequate notice.

³This statement, as it was previously worded, may read as a suggestion that such services will be provided, upon performing the necessary procedures. In fact, the auditing firm may not want to provide such services, for valid reasons. The proposed deletion would eliminate this ambiguity in view of avoiding contentiousness, should the Entity's interpretation of the provision be that additional services will positively be provided.

Annotated Bibliography

- Chartered Professional Accountants of Canada, IFRS Foundation, The International Federation of Accountants (IFAC) & the American Institute of Certified Public Accountants, Inc. (2016). *CPA Canada Standards and Guidance Collection (CPACHB)*.

Chartered Professional Accountants of Canada. (2015). *Canadian Professional Engagement Manual 2015 (CPEM)*.

Online access. The library also has physical copies. (Leddy Library Serials - West Bldng HF5616.C2 C21 v.1/v.2)

These publications represent the most important manuals for professional accountants. They outline the official professional requirements and standards and provide extensive commentary, practice aids and resources such as statistics and surveys, engagement letters exemplars, and special recommendations for practicing professionals. As their content overlaps in several occasion, I segregated them into one category. They were a very valuable resource in identifying the minimum requirements of engagement letters per CAS, additional clauses suggested by the main national professional accounting body, and more generally the Auditor's obligations in performing an audit engagement.

- Melville, D. (2009). *The annotated retainer agreement*. Toronto: Continuing Legal Education, Law Society of Upper Canada = Barreau du Haut-Canada.

Available at Paul Martin Law Library Texts, 1st Flr. (KF 316 .A75 L393 2009)

This publication presents several annotated retainer agreements between attorneys and clients, segregated by typology. It includes annotated family retainers, real estate retainers and contingency fee retainers. This volume helped me learn the purpose of the most prevalent provisions in retainer agreements. Moreover, by identifying the differences between a law practice and an accounting practice retainer, I improved my understanding of the significance of accounting retainers' specific terms and conditions.

- Dudek, A., Hoskins, Jeffery G, & Alexander-Cook, Kim. (2009). *Canadian legal practice: A guide for the 21st century*. Markham, Ont.: LexisNexis.

Kadish, J., & Law Society of Upper Canada. Department of Education. (2008). *Opening your practice* (SKU CLE08-01207). Toronto: The Dept.

Available at Paul Martin Law Library Texts, 1st Flr. (KF 305 .A8 B37 2009 and KF 318 .A2 L393 2008).

These volumes compile information from numerous sources addressing issues relevant to law practitioners today. Among the issues covered, they provide insightful discussions and advice on retainer agreements, including sample agreements. I consulted these resources to gain an understanding of commonly accepted agreements in legal practice.

- BDO Canada LLP. (2015) *Engagement Letter Re: Near North District School Board Audit.*
- Collins Barrow National Cooperative Incorporated. (2014). *Engagement Letter Re: Kawartha Pine Ridge District School Board Audit.*
- Collins Barrow National Cooperative Incorporated. (2014). *Engagement Letter Re: Township of Essa Audit.*
- KPMG LLP. (2012). *Engagement Letter Re: The Town of the Blue Mountains Audit.*
- KPMG LLP. (2013). *Engagement Letter Re: Windsor Public Library Board Audit.*
- KPMG LLP. (2012). *Engagement Letter Re: Windsor Utility Commission Audit.*
- Millard, Rouse & Rosebrugh LLP. (2015). *Engagement Letter Re: City of Brantford Audit.*
- PricewaterhouseCoopers LLP. (2014). *Engagement Letter Re: City of Toronto Audit.*

A series of engagement letters agreed to by several Ontarian entities and five different public accounting firms in recent years. All of the contracts here listed are for the provision of auditing services. These documents were crucial in determining how the minimum professional requirement regarding engagement letters are applied in practice, which provisions are extended or added and in which circumstances, and how such agreements compare to the one I chose to analyze.

- Arens, Alvin A., et al. (2016). *Auditing: The Art and Science of Assurance Engagements.* Pearson Education Canada.

Available at Leddy Library Course Reserves Main Bldng - 1st Flr. (HF5667 .A8336 2015)

A comprehensive volume which includes explanations regarding the audit industry, auditors' legal environment and liability, and the audit process, all with references to current Canadian Auditing Standards. Its use was most useful in obtaining a background understanding of the typical setting of an audit, which provided me with a clear context to analyze the engagement letter.

- Freitas, G. D., & Gonsalves, P. (2006). Assurance - Like appetizer and dessert: Quality audits start with terms of engagement and end with a representation letter. *CA Magazine - Chartered Accountant.*
- Reinstein, A., Lobingier, P. G., & Green, B. P. (2009) Limiting Accountants' Liability Through Engagement Letters. *The CPA Journal.*
- Ehrlich, C. P., & Williams, J. D. (2008) Limiting liability through contractual agreement. *The CPA Journal.*

Causey Jr, D. Y. (1987). The Defensive Audit Engagement Letter. *The CPA Journal*.

Ference, S. B. (2014). Buckle Up: The Importance of Engagement Letters. *Journal of Accountancy*.

Raspante, J. F., & Rosario, R. (2001). Understanding and minimizing CPA liability. *The CPA Journal*.

This set of articles includes Canadian and American publications found on the most prominent journals in the professional accounting field. The authors examine the functions of a well drafted engagement letter and provide guidance as to possible provisions which may be included in such an agreement. I consulted this collection to understand the dominant perspectives on engagement letters in auditing practice.

- Murray, Mark F. (1992). Drafting accountant engagement letters (with forms). *The Practical Lawyer*, 38(8), 61.

This article provides an analysis of engagement letters which differs from the set of publications mentioned above, in that the author defines and discusses such letters according to their contractual nature, the benefits and concerns of which are considered. I found the analysis presented by this article to more closely align with the framework used in the course to consider different agreements, hence I used it as a reference during the study of my contract of choice.

- Dimmer, D., & Campion, John A. (2006). *Professional liability in Canada*. Toronto: Thomson/Carswel.

Available at Paul Martin Law Library Reserve Room, 1st Flr (KF 1289 .D55 2006)

The volume presents a very insightful chapter on civil liability for accountants in Canada, with an emphasis on auditors. This material was most useful in expanding my understanding of issues such as duty of care, negligence, reliance and related matters.

- Court of Appeal for Ontario, Strathy C.J.O., Blair and Lauwers JJ.A. (2016) Livent Inc., Through its Special Receiver and Manager Doroniuk v. Deloitte & Touche et al. *Ontario Reports Third Series*.

Na B. & Karabus M. (2014). The increasing scope of auditors' negligence: Livent Inc. v. Deloitte & Touche LLP. *Gowlings Lafleur Henderson LLP*.

McFarland J. (2016). Court upholds ruling on Deloitte's negligence over Livent. *The Globe and Mail*.

These publications provide good coverage of the Livent Inc. v. Deloitte & Touche case to which I refer throughout my report.

What I learned from this course

I feel obliged to begin by highlighting that this course has provided me with a new understanding of business agreements and the capacity to reflect on such documents with an entirely new set of knowledge. The following list outlines some of the most important concepts that I have learned:

1. The words of any agreement take on their meaning from the context of the agreement itself. It is of paramount importance to identify:
 - a. Who are the parties to an agreement; for instance, individuals, corporations, or other parties identified in sections of an agreement which may be overlooked.
 - b. Which role are the parties exercising; for instance, minority shareholder, majority shareholder, buyer, seller, franchisor, franchisee.
 - c. Which stage of a business relationship the parties find themselves in; for instance, initial negotiations, committed to the transaction but not legally bound to it, or at the execution of the transaction.
2. In most situations, there will be many different ways of addressing elements of an agreement. It is important to consider all of the relevant possibilities as to choose the best option in the specific circumstances.
3. Parties enter into an agreement because they believe their position will be improved by doing so. Therefore, when analyzing the provisions of an agreement, individually and cumulatively, it is important to consider how they benefit the parties, and which trade-offs may take place during negotiation.
4. Every time a contract is subject to an addition, change, or deletion, it is absolutely crucial to consider the impact of such modification on the rest of the agreement. Very often provisions are interrelated, and where the addition, change or deletion creates ambiguity, the modification needs to be improved as to avoid future disputes.
5. In business agreements, parties often fail to plan for a breakdown in their relationship. One common deficiency of many agreements is thus a lack of provisions governing “exit strategies”. This may, at times, be intentional, especially in cases where the provision of such strategies or certainty relative to the outcome of a breakdown may lead to decreased quality of the relationship between the parties.
6. Letters of intent, although generally at least in part not legally binding, are remarkably important to avoid proceeding in complex business transactions when one party’s true priorities are incompatible with the other party’s interests.
7. Literary resources are not a substitute for legal advice, which remains more than necessary in most instances where one is faced with a significant business decision. However, being aware of such resources and consulting them can significantly help one understand the circumstances where the need for legal advice arises, thus making one better prepared to formulate his or her priorities, concerns, and issues in regards to a specific agreement.