

Public Risk Conference

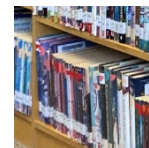
Day 1 Slide Deck

June 1, 2026



Lighting Networking

Morning Session



Lightning Networking

Discuss in your table groups

What's a risk your municipality faced that wasn't on your radar 2-3 years ago?

What changed - environment, people, regulation, or something else?



The *Occupiers' Liability Act* and You: Partners in Safety

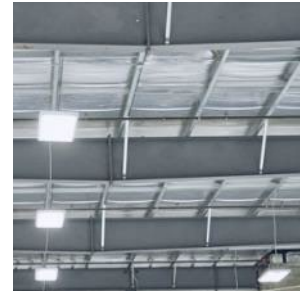


Agenda

- (1) Overview of *Occupiers' Liability Act*
- (2) Treatment of Different Types of Municipal Property under the *Occupiers' Liability Act*
- (3) Interplay between *Occupiers' Liability Act* and the *Municipal Government Act*
- (4) Takeaways
- (5) Questions



Part 1: The Occupiers' Liability Act ("OLA")



General Duty under the *OLA*

- Section 5 of the *OLA* requires the occupier of premises to:

...to take such care as in all the circumstances of the case is reasonable to see that [visitors] will be reasonably safe in using the premises for the purposes for which [they are] invited or permitted by the occupier to be there

Premises & Occupiers under the *OLA*

- “Premises” under the *OLA* means any property in Alberta unless specifically exempted
- All premises, with some exceptions we will discuss later, have an occupier
- Occupier is person/organization who either has either:
 - Physical possession of premises; or
 - Responsibility for, and control over, premises and the persons allowed to enter
- Can be multiple occupiers
 - For example: landlord and tenant of a building can both be occupiers depending on the circumstances of situation and the terms of the lease

Reasonable Care under the *OLA (Pt. 1)*

- Occupier must take reasonable care in respect of:
 - Condition of the premises
 - Activities on the premises
 - Conduct of third parties on the premises
- What constitutes reasonable care depends greatly on the nature of the premises and for what they are being used
- For example, a municipality is required to take much greater care of a busy place like the entrance to City Hall as opposed to a forested area on the edge of town



Reasonable Care under the *OLA (Pt. 2)*

- An occupier does not have a duty to remove all risks, only to take reasonable care to allow for safe use of the premises for their intended purpose. This is illustrated in the following cases:
 - In *Hall-Thomsen v Drader*, the plaintiff was helping the defendant property owners move a BBQ which fell on his arm and severely injured it. No liability, since no evidence the defendants failed in their duty to keep the property reasonably safe
 - In *Hache v West Edmonton Mall Property Inc.*, the plaintiff jumped off the wall of a concrete car ramp in the West Edmonton Mall parking lot. The Mall was found not liable, partially because the plaintiff was not using the ramp (or the wall) for its intended purpose



Differing Standards (Pt. 1)

- Not all visitors are treated alike under the *OLA*
- Occupiers do not owe a duty to adult trespassers to keep premises safe. The only duty is not to recklessly or deliberately harm them
 - For example: in *Bird v. Holbrook (1828)* a property owner set up a spring-loaded gun in his garden to prevent trespassers from stealing his tulips. The gun injured the plaintiff, who was awarded damages
- Early take-away: don't do that

Differing Standards (Pt. 2)

- No duty owed to child trespassers unless the occupier knows (or has reason to know) that a child is present and that the condition of the premises puts them in danger
- If occupier an occupier knows children will be present and there is a hazardous condition, they owe a duty to take reasonable steps to protect children from that hazardous condition
- This duty tends to be interpreted broadly by the courts
 - So, in *Houle v. Calgary (City)*, the court found the City negligent for having uninsulated high voltage lines behind a fence that had been modified in a way that made it easy for children to climb

Defences to Liability Under the *OLA* (Pt. 1)

- Visitors can waive right to sue for breach of *OLA*, but this has to be 100% clear and must be brought to the visitor's attention
- A waiver typically needs to be signed and written in clear language, ideally with bold or coloured font stating that legal rights are being waived
- Waivers not binding on minors, but you can have their parents sign assumptions of liability, which make the parents responsible for paying any damages awarded against the municipality

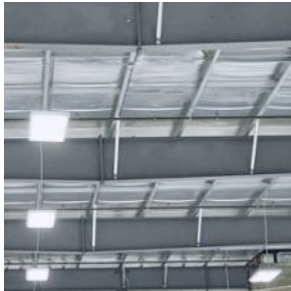
Defences to Liability Under the *OLA* (Pt. 2)

- No duty of care owed “in respect of risks willingly accepted by the visitor”
- Really high bar to prove risk willingly accepted, but is possible
 - For example, in *Allen v Radej*, the 46-year-old plaintiff, who was, in his own words, “three-quarters pissed” and “pretty drunk”, climbed a tree at the defendants’ farm then fell and broke his back
 - Court found that the plaintiff, being an adult, knew the risks of climbing a tree while intoxicated and willingly accepted them

Defences to Liability Under the *OLA* (Pt. 3)

- No liability due to negligence of independent contractor if:
 - Occupier exercised reasonable care in selecting the contractor; and
 - It was reasonable in all the circumstances that the work performed by the independent contractor should have been undertaken
- Can be a good defence in slip and fall and construction site cases as long as the contractor is reputable
- Signs or warnings on their own will only satisfy the duty of care if “in all the circumstances the warning is enough to enable the visitor to be reasonably safe”

Part 2: Municipal Property under the *OLA*



What Property is Covered by the *OLA*?

- All municipal property, and structures of any kind on that property, are covered unless the *OLA* says they aren't
- Ships, railway cars, transmission lines, and residential trailers are covered, while aircraft, motor vehicles (except trailers), portable equipment, and portable derricks are not covered
- “highways” owned or controlled by municipal government are not covered
- *OLA* does not define the term “highway”, so a bit unclear what it means, but safe to assume that roads are not covered by the *OLA*. Sidewalks may not be covered either, but that is still a grey area



Specific Types of Property

- Some types of municipal property have a different standard of care under the *OLA*
- If a visitor uses the following types of property for recreational purposes without paying, then the only duty is not to deliberately or recklessly harm them:
 - Golf courses when not open for playing
 - Rural premises that are vacant or undeveloped
 - Rural premises that are forested or wilderness areas
 - Utility rights of way (not including structures)
 - Marked recreational trails



Part 3: Interplay between the *OLA* and the *MGA*



MGA Defences (Pt. 1)

- There are a number of defences in the *MGA* that apply to claims under the *OLA*
- For example, municipalities cannot be liable for damage caused by (*MGA* section 533):
 - (a) ...the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on a road, or
 - (b) ...any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.



MGA Defences (Pt. 2)

- Municipalities are also not liable for damages resulting from (*MGA* section 530):
 - (a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and
 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

MGA Defences (Pt. 3)

- No liability for system of inspection and maintenance does not mean that a municipality can just decide not to inspect or maintain property, since it still has a duty to maintain property in a state of repair
- So, if the municipality knows (or really should have known) about a state of disrepair, then it will be liable for damages
- If the municipality didn't know about a state of disrepair because of how their systems of inspection or maintenance were designed, then no liability

MGA Defences (Pt. 4)

- Some defences in the MGA only apply to certain types of property, for example section 532(6) says a municipality is only liable for a state of disrepair to a “public place” if it was aware, or should have been aware of that disrepair
 - “Public place” is not defined, but basically means somewhere anyone can go without permission or for pay
 - So section 532(6) applies to parks, but not to municipal offices or public works operations

Part 4: Takeaways

- If you use waivers, have them reviewed by a lawyer
- Have warning signs be as specific as possible, especially for any unexpected hazards
- Do not do anything to deliberately harm trespassers
- If you have free recreational trails, make sure they are well marked
- Assess whether children could easily enter into hazardous areas

Questions?



Insurance Claims and the Role of the Independent Adjuster

Alberta Municipalities Public Risk Conference 2026

Presented by Kent Swanson, CIP, CRM and Jeanine Fahey
Coast Claims Service Ltd.

Meet Your Presenters

40+

Years combined adjusting experience

CIP

Chartered Insurance Professionals

AB & BC

Alberta & BC licensed

Kent Swanson, CIP, CRM

- Independent adjuster since 2004, Coast Claims partner since 2022 with deep municipal claims expertise
- Specializes in large complex property and casualty losses across hospitality, agriculture, and energy sectors
- Level 3 Adjuster with Canadian Risk Manager designation, Vale trained and Xactimate certified
- Based in Edmonton serving Alberta and British Columbia municipalities

Jeanine Fahey

- Unique blend of adjusting and restoration experience as both Property Claims Adjuster and Restoration Project Manager
- Specializes in multi-unit and residential property claims with exceptional customer service for sensitive situations
- Alberta Level 1 Adjuster with extensive IICRC certifications including water damage, fire and smoke restoration
- Nearly completed CIP designation ensuring efficient and effective claims process

Session Agenda

Independent Adjuster Role

Liaison, investigation, expert coordination, coverage assessment

Basic Claim Forms

Critical documents required for claim processing

Property Claims

Types, process, financial concepts, challenges, and CAT events

Liability Claims

Investigations, determinations, subcontractor issues, relationships

After Hours Process

When and how to report urgent claims

- Focus on property damage and liability claims involving property damage only - not covering automobile or bodily injury claims
- Interactive session for municipal risk managers and insurance professionals to understand adjuster workflow
- Practical guidance on forms, processes, and common challenges faced in municipal claims handling
- Q&A opportunity at conclusion to address your specific municipal claim scenarios

Pop Quiz – Adjuster's Role

Once you've submitted a claim, your job is done and the Adjuster takes over and handles everything going forward.

False

While the Adjuster's role is to facilitate and guide you through the claims process, ongoing involvement from the municipality is still critical.

False

You wanted more work to do...right???

Claims are a team effort 😊

The Independent Adjuster's Essential Role

- Serve as liaison between member and AB Munis, gathering comprehensive information for thorough claim investigations
- Coordinate specialized experts like structural engineers, fire investigators, and forensic consultants for complex claims
- Assess investigation findings against policy coverages to determine coverage and ensure accurate claim valuation
- Assist with contractor selection and repair coordination, then indemnify and quantify loss per policy terms
- Facilitate the claims process and work closely with the member throughout the lifetime of the claim



Pop Quiz - Authority

The Independent Adjuster assigned to the claim will have the ultimate authority to make decisions.

False

True

The Independent Adjuster is an intermediary between you and Alberta Municipalities.

Or

False

The authority remains with the Municipality and the Insurer.

Critical Claim Forms Overview

- Critical Path Letter initiates claim timeline and establishes key milestones for all parties to follow throughout process
- Blank Proof of Loss form requires sworn statement documenting claim circumstances, damages, and claimed amounts under oath
- Privacy Consent authorizes adjusters to gather statements, records, and information from third parties essential for investigation
- Choice of Contractor form documents member's contractor selection while ensuring competitive bidding and quality standards

Critical Path Letter

Initial claim notification and timeline establishment

Proof of Loss Form

Formal sworn statement of claim details and amounts

Privacy Consent

Authorization for information gathering and sharing

Choice of Contractor

Member selection of preferred repair contractor

GST Declaration

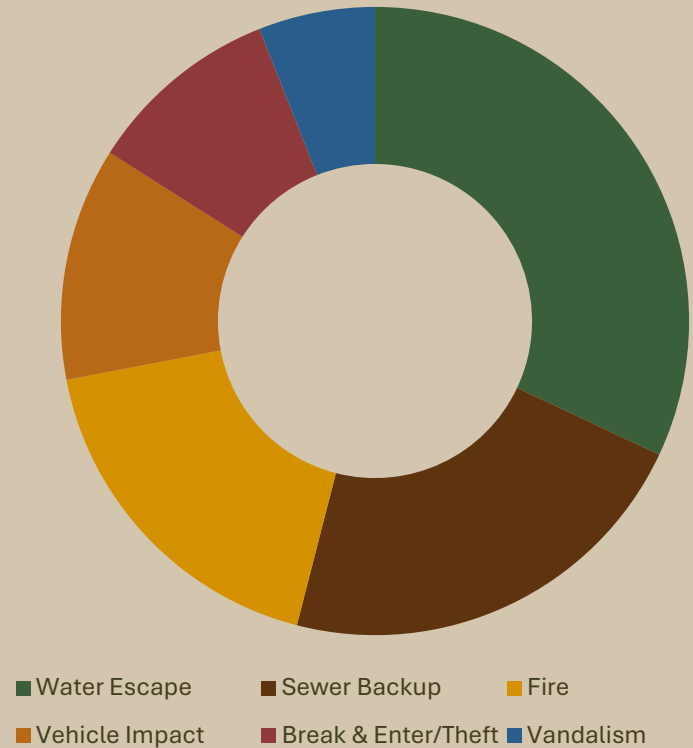
Tax status declaration for accurate settlement calculation

Police and Fire Report Authorizations

Require Drivers License photos and proof of affiliation

Property Claims Landscape

Property Claim Distribution by Type



- Fire claims range from kitchen incidents to total building losses, requiring specialized investigation and fire origin determination
- Water escape remains the most frequent and costly claim type, including burst pipes, roof leaks, and plumbing failures causing extensive damage
- Sewer backup claims are increasingly prevalent, requiring careful coverage analysis and contamination assessment for proper remediation
- Vehicle impact claims involve structural assessment and liability determination when vehicles strike municipal buildings or infrastructure
- Everything else we never expected....

Pop Quiz – Water Damage

If one of your buildings has a minor water leak or sewer backup, what should you immediately do?

B. Send out your team or Contractor for the initial mitigation.

A. Report it to the Insurer

Key Takeaway – you are responsible to mitigate the loss and prevent further damage, like water extraction and drying equipment, and let them handle everything.

B. Send out your team or a Contractor for the initial mitigation.
DISCLAIMER: We did NOT just give you permission to finish repairs entirely and THEN call insurance.



mitigation.

Pop Quiz – Water Damage

Using the same example as above of a water leak in one of your buildings...

What is your responsibility with respect to the plumbing investigation and repairs?

- A. Nothing directly – your responsibility is to report it to insurance and we will take care of it.
- B. Call a Plumber to investigate and provide a report on the cause of loss.
- C. Obtain as little information as possible about the cause to avoid liability allegations.

Pop Quiz – Water Damage

Same example, what instructions would you give the Plumber?

- A. Nothing really, just get them to figure out the problem and repair it.
- B. Take lots of photos and provide a thorough report. Beyond identifying the source, it's important to determine why the failure occurred (ie. Freezing, Age related wear, etc).
- C. Throw out the damaged part of the line – it's useless at this point. Make sure the plumber knows to keep the damaged portion after repairs are done, in case further testing is required.
- D. Keep the damaged part of the line.
- E. Both A and C
- F. Both B and D

The Importance of Retaining Evidence for the Cause of Loss

Retaining Evidence Matters because it can:

- Identify the true cause of loss
- Preserve potential subrogation/recovery rights
- Assists with coverage determination
- Prevents disputes between parties and insurers
- Allows experts to complete accurate forensic analysis
- Even “minor” discarded components can become critical evidence

Remember the Golden Rule:

- Photograph it, Document It, and Retain it.

Some Examples of Evidence:

- Failed plumbing components
- Faulty electrical breaker
- Appliances
- Toilet tanks
- Lithium batteries
- Radiant heat zone valves

Notice of Loss

Member reports claim immediately after incident discovery



Investigation

Adjuster gathers evidence, statements, determines cause and coverage



Emergency Repairs

Stabilize property and prevent further damage escalation



Bid Process

Competitive contractor bidding for rebuild and restoration work



Rebuild Completion

Contractor performs repairs with adjuster oversight and final settlement

Property Claim Process Lifecycle

- Notice of Loss must be reported promptly to enable rapid response and minimize damage through early intervention
- Investigation phase involves site inspection, witness statements, documentation review, and expert consultation as required to establish cause
- Emergency repairs stabilize the site and prevent further loss escalation through immediate mitigation actions like tarping or water extraction
- Competitive bid process ensures fair pricing and quality contractors while respecting member's contractor choice preferences
- The claims process can present challenges, and the role of the Insurance Adjuster is to guide and support the Member in navigating them.

Understanding Replacement Cost vs Actual Cash Value

Replacement Cost

Full replacement cost coverage

- Covers full cost to replace or repair damaged property with like kind and quality materials without depreciation deduction
- Member must complete repairs within specified period to recover full replacement cost amount under policy terms
- Provides most comprehensive coverage for municipalities needing to restore facilities to pre-loss condition

Actual Cash Value

ACV = Depreciation Applied

- Represents replacement cost minus depreciation for age, wear and condition of damaged property
- Depreciation amount varies based on property age, maintenance condition, and expected useful life remaining at time of loss
- ACV settlement is final with no additional payment for depreciation, resulting in potential funding gap even if repairs completed
- Less common for municipal property but may apply to older facilities or specific policy provisions
- If RCV applies it is at the members discretion if they want to accept a depreciated cash settlement or have the property repaired or replaced at full replacement cost value.



Deductibles and GST Considerations

Deductible applied per occurrence

GST recoverable status matters

Net settlement calculation

- Deductible is member's retention amount applied per occurrence, reducing total claim payment by specified amount
- Higher deductibles reduce insurance premiums but increase out-of-pocket costs requiring budget planning
- GST declaration form determines whether member can recover GST through tax filings
- Municipalities typically recover GST through tax mechanisms, so settlements often exclude GST

Pop Quiz - Deductibles

Does your deductible apply if you're not at fault?

For instance, if a third-party driver presses the gas pedal instead of the brakes and drives into one of your buildings, is the municipality still responsible for their deductible if they submit a claim?

Yes

BUT.....

- **Yes**

We may attempt recovery of your deductible against the at-fault party, but recovery is never guaranteed.

- **No**

- **Maybe**

Key Takeaway: You are always responsible for your deductible. Successful recovery is simply a bonus.

Tenant Occupied Buildings Complexities

Lease Agreements

Tenant Insurance Policy

Lost Rental Income

- Tenant contents and operations typically not covered under municipal policy. Tenants should have their own policies to cover their contents, business interruption, and liability.
- Lease agreements must be reviewed to determine repair responsibilities, improvements, and liability between parties.
- Coordination with multiple parties including tenants, property managers, and insurers adds complexity and extends timelines.
- Business interruption claims require analysis of lease obligations, rent abatement, and municipal rental income loss.

HOMEWORK

LEASE AGREEMENTS

Things to check for on
your active tenant lease
agreements

1. Do you have a formal lease agreement with your Tenant?
2. Is the lease agreement expired?
3. Are the Landlord and Tenant responsibilities clearly defined?
4. Review Indemnity and Hold Harmless Clauses

Common Challenges and Timeline Expectations

The first question we usually get is....

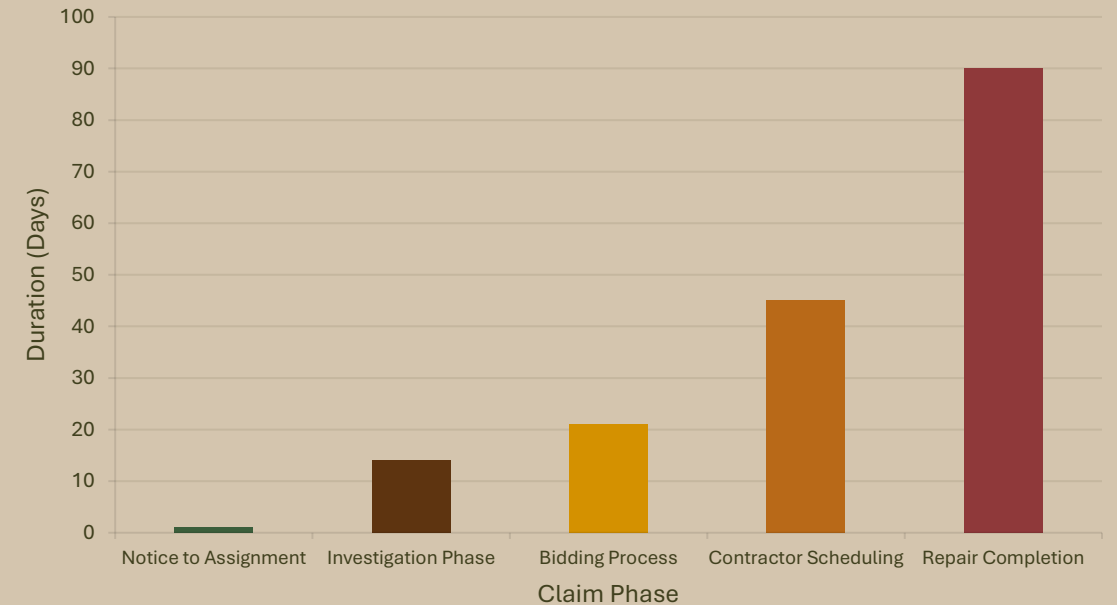
How long will this take?

And our answer is almost always...

It depends!!

- Every claim is different, so the timelines will always vary depending on the individual circumstances.
- Common delays are related to:
 - Limited contractor availability and supply chain delays
 - Complex coordination among tenants, municipal staff, and contractors
 - Competitive bid process is essential for accountability but adds delays before repairs commence
- Local contractor preferences must balance availability, capacity, and competitive pricing.

Typical Property Claim Timeline by Phase



Catastrophe Claims: Overland Flooding and Wildfire

Wildfires
increasingly
severe

Overland
flooding more
frequent

Pre-established
vendor networks
critical

- Wildfires and overland flooding events are becoming more frequent and severe across Alberta, generating high volumes of simultaneous claims
- Rapid response relies on quick mobilization and efficient management of contractors during catastrophe surge conditions
- Pre-established vendor networks enable faster deployment of restoration services, reducing delays and minimizing claim severity
- Consistent communication is crucial during CAT events to avoid confusion that compounds losses and extends recovery timelines



Pop Quiz – Liability for Property Damage

When something happens when the municipality is or might be liable, you should:

- A. Apologize profusely to the third party and assure them that you'll take care of it.
- ~~B. Report a claim and let your adjuster lead the investigation liable and see if they go away.~~
- C. Report a claim and let your adjuster lead the investigation.

Pop Quiz – Liability for Property Damage

When it's abundantly clear that the municipality IS liable, should you:

- A. Tell the third party that you accept liability and will be reporting it to your Insurer.
- B. Negotiate a settlement with the municipality.
- C. Don't say anything about liability and direct all communication about it to your Adjuster.

Pop Quiz – Liability for Property Damage

If the municipality has a subcontractor performing work on their behalf (ie. Water meters, paving, water main repairs, etc.), is the municipality liable if the subcontractor causes damage?

B. Yes, the municipality is potentially liable for the subcontractor's work.

contract stating that the subcontractor Even when work is subcontracted, municipalities can still face liability when a subcontractor is acting on their behalf.

B. Yes, the municipality is potentially liable for the subcontractor's work. While the subcontractor's insurance would generally respond first, the municipality should still notify their insurer in these situations.

Liability Claims: Investigation and Determination

No simple liability formula

Claim-specific analysis required

Policy and legislation govern

- Property damage liability claims involve complex investigations with multiple responsible parties requiring careful evidence gathering
- Review policy wording and applicable legislation, including Municipal Government Act, to determine coverage parameters
- Subcontractor liability requires reviewing contracts, work specifications, and whether contractors maintained required insurance coverage
- Liability determinations based on variety of factors with no single answer, requiring thorough claim-specific investigation and professional judgment
- Relationships during liability claims can be challenging when municipalities know the other parties, requiring professional objectivity

Gather Information

Site inspection, photographs, physical evidence collection



Statements

Witness interviews, involved parties, subject matter experts



Documentation Review

Contracts, maintenance records, inspection reports, bylaws



Expert Engagement

Engineers, consultants for technical analysis when required



Determine Liability

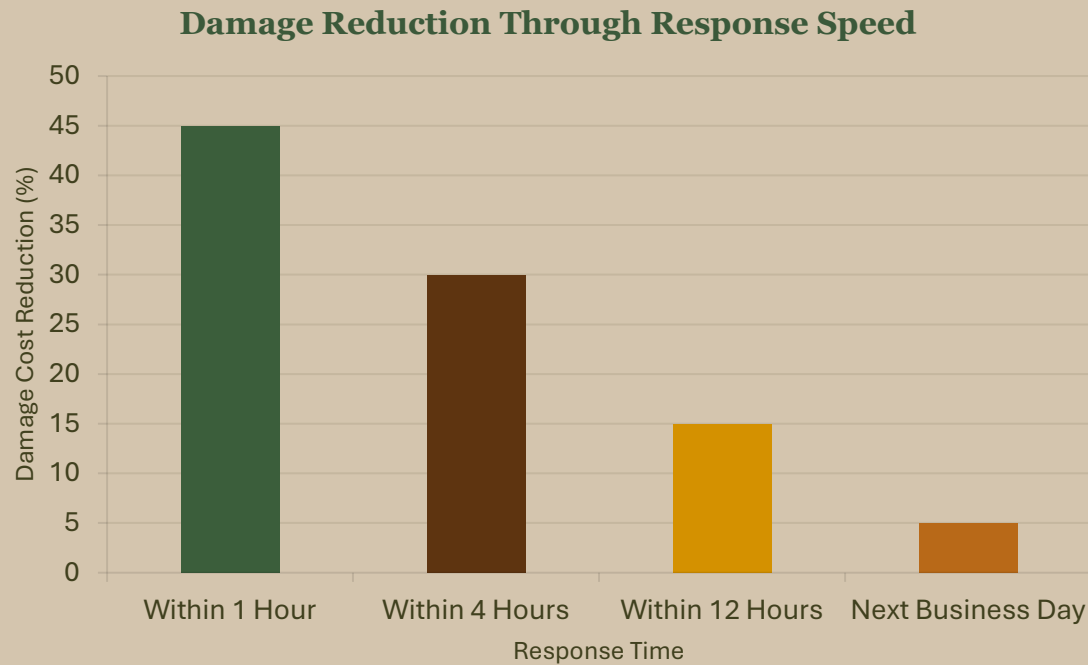
Evaluate all evidence against policy wording and legislation

Pop Quiz – After Hours Claims

If something happens after hours, let's say Saturday at 2am, when do you need to report an after-hours claim?

- A. Anytime anything happens, you should report after hours
- B. If the damages are extensive and/or include third party damages.
- B. If the damages are extensive and/or include third party damages
- When in doubt, or if you need guidance on what to do - report the claim. We're always happy to help
- C. Only if third party damages

After Hours Emergency Response



- Quick reporting and rapid deployment minimizes damage progression and controls costs .
- 24/7 response capability is vital for public safety and critical infrastructure protection .
- Early intervention prevents secondary damage and reduces claim severity.
- Clear communication protocols improve coordination and emergency response.
- Familiarity with Preferred Vendors helps ensure rapid mitigation when losses occur.



After Hours Reporting Process

Easiest lesson of the day...

Just call Kent

(his number is on the next slide)

But if you forget...here's how to find it:

[Reporting an After-Hours Claim](#)

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Questions & Discussion



We welcome your questions about specific municipal claim scenarios and challenges you've encountered

Thank you for attending our session at the Alberta Municipalities Public Risk Conference

AGING MUNICIPAL INFRASTRUCTURE: WHAT GIVES?



BROWNLEE LLP
Barristers & Solicitors

Presented by:



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Brownlee LLP

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Overview

1. Relevant types of infrastructure
2. Common ways to manage disrepair
3. *Legare v Acme (Village)*
4. *Pulkinen v Crowsnest Pass (Municipality)*
5. *Condo Corporation No. 0410106 v Medicine Hat (City)*
6. Successful Defences/Best Practices
7. Questions



What types of infrastructure?



- **Roads, bridges, sidewalks, culverts, and traffic control systems**
- **Water and wastewater systems**
- **Recreation areas**
- **Emergency services buildings and public amenities**
- **Waste disposal facilities**
- **Shared utility infrastructure**



- **Privately owned infrastructure servicing only a single parcel of land**
- **Private utility and telecommunication networks**
- **Provincial highways**



Managing disrepair and aging

- Strategic planning
- Phased replacement plans
- Life-cycle costing
- Risk-based infrastructure management
- Proactive inspection, maintenance, renewal, and decommissioning
- Regional collaboration



Legare v Acme (Village): 2023 ABKB 145

- Village was aware that its sewer lines were narrower than required by provincial standards, making them more susceptible to blockage
- A severe sewage backup occurred in the home of the Plaintiffs
- Village relied on visual inspections of the sewer lines performed once per year



Municipal Government Act

Section 530: Inspections and Maintenance

(1) A municipality is not liable for damage caused by

(a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency, or absence of inspections, and

(b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency, or absence of maintenance.



Legare v Acme (Village): 2023 ABKB 145

- A design defect is a state of disrepair
- Since the Village knew about the inadequacy...
 - Replace the pipes; or
 - Impose a heightened inspection/maintenance regime
- The Court awarded stigma damages to compensate for diminished property value even after remediation to pristine condition

Legare v Acme (Village): Case takeaways

DO:

- Repair known deficiencies as soon as possible
- Impose vigilant, documented, proactive maintenance regimes on infrastructure
- Be proactive in implementing infrastructure which conforms with existing regulations

DON'T:

- Rely on cursory visual inspections of infrastructure, particularly when the infrastructure is known to be defective
- Delay planning/management of aging infrastructure

Pulkinen v Crowsnest Pass (Municipality): 2020 ABPC 53

- Rainwater flowed over a “slumped” curb and onto the Plaintiff’s property, causing damage
- The municipality had been notified twice of the curb’s deficiency prior to the event in question
- The municipality inspected the curb, but elected not to repair it



Municipal Government Act

Section 530: Inspections and Maintenance

- (1) A municipality is not liable for damage caused by***
- (a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency, or absence of inspections, and***
 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency, or absence of maintenance.***



Municipal Government Act

Section 533: Things on or adjacent to roads

A municipality is not liable for damage caused

- (a) by the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on a road, or*
- (b) by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.*



Pulkinen v Crowsnest Pass (Municipality): Case takeaways

DO:

- Document decision making
- Prioritize based on available resources
- Use discretion to decide against immediate repair, if that decision can be made in good faith

DON'T:

- Ignore repairs just because curbs do not automatically attract liability
- Ignore known issues/deficiencies, or act in bad faith

Condo Corporation No. 0410106 v Medicine Hat (City): 2019 ABCA 294

- A development company agreed to be responsible for the internal water, sewer, and lift station infrastructure within their development
- The subsequent landowners argued that the City was responsible for that infrastructure



Municipal Government Act

Section 34: Duty to supply utility service

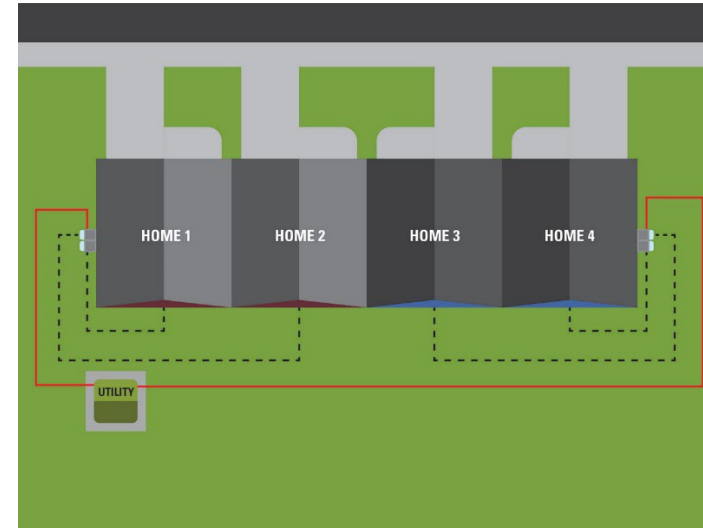
(1) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality must, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel on the request of the owner of the parcel.

(2) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality may, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel of land on the request of the occupant of the parcel who is not the owner.



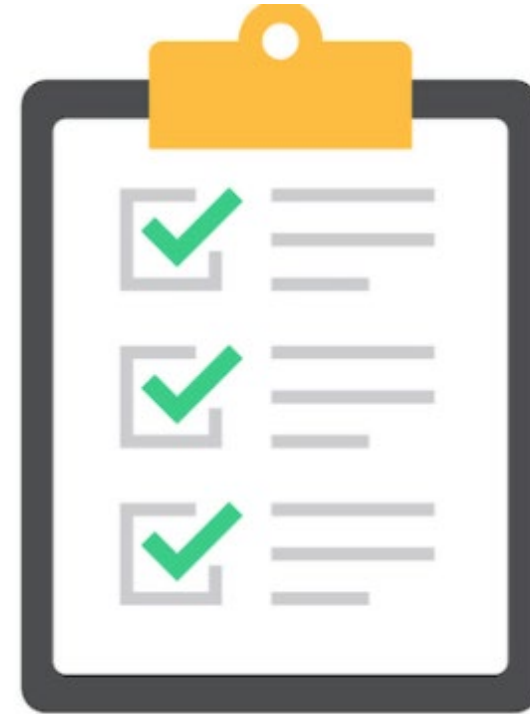
Condo Corporation No. 0410106 v Medicine Hat (City): 2019 ABCA 294

- A municipality has a duty to maintain services on private land if they service multiple parcels of land
- The duty does not extend to any part of the service which is used solely for the purpose of supplying utility services to that parcel



Successful Defences

- Be vigilant in maintenance and inspection practices
- Implement systems which include steps to prevent disrepair from coming about
- Put in place phased replacement/repair plans
- Ensure Council is involved in decision-making and financial planning
- Take steps to address disrepair once it has been discovered

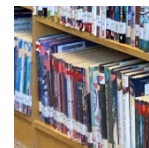


QUESTIONS?



Lighting Networking

Afternoon Session



Lightning Networking

Discuss in your table groups

Share a near miss that could have turned into a major claim or issue.

What changed afterward (if anything)?



Fire & Flood Emergency Services Ltd.



Defamation

A presentation to the Alberta Municipalities
June 1, 2026

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Presenters



Lindsay Nilsson



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National Offices



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Agenda

1. What is Defamation?
2. Legal Test for Defamatory Communication
3. Libel vs. Slander
4. Defences
5. Risk Management Tips and Takeaways
6. Questions

What is Defamation?

- It is communication made to other people that tends to hurt someone's reputation
- It can be written, spoken, or a gesture



Legal Test

A plaintiff must prove three elements:

1. that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
2. the words referred to the plaintiff; and
3. the words were published, meaning that they were communicated to at least one person other than the plaintiff.

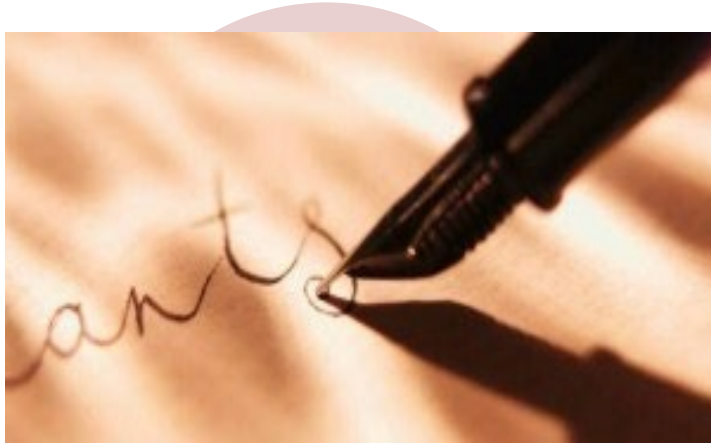
The plaintiff need not show that the defendant intended to do harm or was careless.

The tort is one of strict liability.

If the plaintiff proves the three elements, the onus shifts to the defendant to advance a defence to escape liability: *Grant v Torstar Corp.*, 2009 SCC 61.



Libel vs. Slander



WRITTEN



SPOKEN

Republication

In general, the law treats someone who repeats a defamatory statement as **no less liable** as the person who originated the defamatory statement, often called the “repetition rule”.

If one person writes a libel, another repeats it, and a third approves what is written, they all have made the defamatory libel. Both the person who originally utters the defamatory statement, and the individual who expresses agreement with it, are liable for the injury.

Hill v Church of Scientology of Toronto, [1995] 2 SCR 1130

Defences to Defamation

- **Justification**
- **Qualified Privilege**
- **Fair Comment**
- **Responsible Communication**



Justification

- The justification defence requires the defendant to adduce evidence showing that the impugned statement was substantially true, including its main thrust (or sting). Partial truth is not a defence: *Bent v Platnick*, 2020 SCC 23.



Qualified Privilege

- The person who makes a communication had an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is made had a corresponding duty to receive it.
- The defence can be defeated by malice or if the limits of the duty are exceeded: *Botiuk v Toronto Free Press Publications Ltd.*, 1995 CanLii 60 (SCC).
- Malice can be demonstrated by evidence that the speaker knew the comment was FALSE, or with reckless indifference to its truth or falsity, or he does so for the dominant purpose of injuring the plaintiff because of spite or animosity, or for some other dominant purpose that is improper, indirect, or outside the occasion of privilege: *Kent v Martin*, 2016 ABQB 314.



Fair Comment



- The defence of fair comment requires a number of elements:
 - (a) it must be a comment on a matter of public interest
 - (b) based on fact
 - (c) it must be recognizable as a comment, and
 - (d) the following question must be satisfied: could anyone honestly express that opinion on the proven facts?
- Like qualified privilege, the defence of fair comment can be defeated if a defendant was actuated by malice: *WIC Radio v Simpson*, 2008 SCC.

Responsible Communication

- Responsible communication on matters of public interest defence is a relatively new defence created by the Supreme Court of Canada in *Grant*.
- The defence requires the publication to be on a matter of public interest. Second, the defendant must show that publication was responsible, in that he or she was diligent in trying to verify the allegations, having regard to all the relevant circumstances.

Bent v. Platnick, 2020 SCC 23

- B is a lawyer and partner at an Ontario law firm. She is a member and, at the relevant time, was the president-elect of the Ontario Trial Lawyers Association (“OTLA”).
- P is a medical doctor who is typically hired through insurance companies to review other medical specialists’ assessments of persons injured in motor vehicle accidents
- B sent an email to approximately 670 OTLA members in which she made two statements that specifically mention P by name and allege that, in the context of those disputes, P “altered” doctors’ reports and “changed” a doctor’s decision as to the victim’s level of impairment.

Grant v. Torstar Corp., 2009 SCC 61

- A newspaper published a story concerning the proposed expansion of a private golf course, built on a property owned by the plaintiff, Peter Grant.
- The story contained comments from local residents that were critical of Grant, alleging that he was using his political influence to gain permission to expand the golf course from three holes to nine holes.
- After the article was published, Grant sued the newspaper's parent company for defamation
- Created the common law defence of responsible communication

Damages General Damages

- General damages (loss of reputation and injury to feelings) are presumed and do not required proof of loss
- Factors:
 - (1) the plaintiff's position and standing;
 - (2) the nature and seriousness of the defamatory statements;
 - (3) the mode and extent of publication;
 - (4) the absence or refusal of any retraction or apology; and
 - (5) the whole conduct and motive of the defendant from publication through judgment.

Hill v. Church of Scientology of Toronto [1995] 2 S.C.R. 1130

Damages General Damages

- Calculation of damages for defamation is speculative and an inexact science
- No objective measure
- Need not be calculated mathematically

Kent v Martin, 2016 ABQB 314 - \$200,000

Elkow v Sana, 2020 ABCA 350 - \$150,000

Gouin v. White, 2013 ABQB 332 - \$100,000

Elgert v. Home Hardware Stores Limited 2011 ABCA 112 - \$60,000

Damages

- Pecuniary
- Aggravated
- Punitive

Risk Management Tips

- Develop social media policies
- Develop protocols for vetting of information posted to public channels
- Exercise caution before re-posting information with unverified sources
- Be extremely cautious before publishing opinion
- Limit distribution of critical information to only those who need to have it
- Purchase appropriate insurance

Questions?

