

ABMUNIS PRESENTATION

Public Entity Liability
Maintenance, Transparency and Prudence

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BASIC CONCEPTS OF PUBLIC ENTITY LIABILITY:

BACKGROUND:

Public Entity Liability insurance:

- Provides coverage for a loss caused by a wrongful act committed while conducting duties by or on behalf of a public entity.

Public/Municipal Infrastructure:

- All Alberta municipalities own, operate and maintain various infrastructure assets such as roads, sewers, and municipal buildings, each with a defined service life.
- Service life is the length of time an asset provides an acceptable level of quality, quantity, cost and responsiveness.
- Municipalities must ensure the full service-life is attained while keeping maintenance, rehabilitation and/or replacement of assets cost-effective.

Negligence:

- The failure to exercise the care toward others which a reasonable or prudent person would do in the same or similar circumstances.
- Under Alberta law, municipalities (cities and towns) need to keep their roads and other public places in a reasonable state of repair; failure to do so can lead to negligence claims.
- Municipal corporations, which include cities and towns, may no longer be immune to liability as they had been in the past. They can be held accountable for various wrongdoings, such as tortious acts, breaches of contract and neglecting statutory duties.

What are the Municipal responsibilities in the province of Alberta

- Generally speaking, municipalities provide services to the communities that they serve, such as road maintenance, water and wastewater utilities, waste management and emergency management.

Infrastructure Maintenance:

- Obviously, it is important to ensure that all Municipal infrastructure is properly maintained and that corrective maintenance which includes prompt repair or replacement of various has been undertaken.
- Follow the municipal asset management plan that has been established.
- Document all maintenance work that has been completed.
- It is one thing to say you have followed your municipal asset management plan but, in the event of a claim, you will have to show that you have.
- It is important to show the public that the municipality exercises diligence when it comes to a maintenance and repair program.
- In the case of a sub-contractor being involved (i.e., snow removal company) ensure that a completed, signed and current contract is in place.

Expense of a Maintenance Program:

- It is no secret that there is a cost to running a pro-active maintenance program.
- Municipalities operate under a budget so decisions are made on what maintenance work needs to be addressed and the time in which that work will be addressed.
- The importance of documenting inspections/assessments of areas that will need maintenance work cannot be overstated.
- Periodic inspections of assets and facilities tends to show a proactive approach to facility maintenance which is important.

CLAIMS EXAMPLE:

Slip & Fall at a Community Centre

Can be reported in several different ways:

- Immediately after the incident occurred
- The injured party could call in hours/days or weeks later to adviser what happened
- Receive a letter from a lawyer/served with a Statement of claim months or years after the incident.

When an incident is reported by the claimant shortly after an incident occurs it is important to secure as much information as possible in case a claim is pursued:

- Take photos of the area the claimant was injured.
- Secure any documents that would show how that area was maintained:
 - Snow removal records
 - Maintenance/inspection records
 - Records of any recent construction work done in the area

If you have any contractors that have completed a recent project in the area or are in the process of completing a project, it is important to secure information such as any incident reports they may complete, confirm if any project insurance policies, any maintenance, inspection or work logs.

If a demand letter/Statement of Claim is received and this is the first time you are made aware of an incident:

- Likely not able to obtain photos of what the area looked like at the time of the fall
- Secure any maintenance/inspection records

Ultimately, if a claim is pursued by a claimant, we need to be able to provide maintenance/snow removal records to show that the area in question was maintained and that any policy and procedure.

Another way to look at it is if there is nothing documenting maintenance/inspections were completed, then it is as if they did not occur.

If a contractor is involved in snow clearing/maintenance, it is important to have a current signed contract in place. This will assist should the need arise to transfer liability to the contractor if they did not live up to the terms of the contract.

Prejudicing underwriters' ability to investigate and settle a claim

- Not reporting a claim
- Admitting liability/fault for an incident
- Agreeing to make a payment

QUESTIONS ???