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# Municipal Liability for Public Facilities and Events

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## Outline and Agenda

### **Sources of Liability**

- Tort
- Occupier's Liability
- Contract
- Statutory Liability  
(Human Rights Act)

### **Managing Liability and Risk**

- Policy and Operational Decisions
- Contractual Protections:
  - Leases
  - Waivers and Releases
- Event Permitting
- Policies



Sources of Liability:  
Natural Person Powers

## **Legal Status and Capacity of Municipalities**

### **Corporation**

4 A municipality is a corporation.

### **Natural person powers**

6 A municipality has natural person powers, except to the extent that they are limited by this or any other enactment.

## Sources of Liability

### **Tort Liability**

- Elements of claim in negligence:
  - Municipality owes a duty of care to the claimant;
  - Municipality breached the standard of care;
  - Claimant suffered loss or damages;
  - Claimant's loss was caused by the municipality's breach; and
  - Claimant's loss was a reasonably foreseeable result of the municipality's breach

## Sources of Liability

### Occupier's Liability

- *Occupier's Liability Act* (Alberta) imposes a duty of care on the “occupier” of “premises”
- Occupier includes:
  - Person in physical possession of premises; or
  - a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises.
  - Can be multiple occupiers.



## Sources of Liability

### Occupier's Liability

- “*Premises*” is broadly defined. Includes trailers used for offices, staging, scaffolding, public lands (including environmental reserve), and public buildings.
- However, the standard of care may change depending on the nature of the lands.
- See, *McAllister v Calgary*.

## Sources of Liability

### Occupier's Liability

- Duty of Care applies to “Visitors” to see that they are reasonably safe in using the premises for the purposes for which the visitor is invited.
- “Visitor” also includes a person whose presence becomes unlawful and is trying to leave the premises.
- No duty of care to trespassers.

## Sources of Liability

### Occupier's Liability

- Recreational Users (s 6.1)
- Persons using:
  - Rural premises that are agricultural, vacant or undeveloped, or forested/wilderness;
  - Golf courses not open for playing;
  - Utility rights of way excluding structures; and
  - Recreational trails
- Are treated as trespassers unless they pay the occupier to use the premises for recreation.



## Sources of Liability

### **Contractual Liability**

- Legally binding agreement (written or unwritten) commonly involving the provision of goods and/or services
- Consequences for breach of contract depend on the particulars of the contract
- Damages generally based on position innocent party would have been in had the contract been performed

## Sources of Liability

### **Contractual Liability**

- E.g. breach of a lease.
- Muni enters into a lease with commercial tenant. Typically no early termination.
- Muni wants tenant out due to general issues with tenant, so expels tenant contrary to lease.
- Tenant could sue Muni for contractual damages.

## Sources of Liability

### Statutory Liability

- Various provisions in the MGA imposing a duty on Municipalities (such as the duty to repair roads);
- Also includes liability under the *Alberta Human Rights Act* re discrimination relating to goods, services, accommodation, facilities.

## Sources of Liability

### Statutory Liability

- *Alberta Human Rights Act* Section 4:

No person shall

(a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or

(b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public,

- Because of the person's protected ground.



## Sources of Liability

### **Statutory Liability**

- E.g. Policies prohibiting:
  - Sikh kirpan in recreational facilities.
  - Animals in public buildings/facilities.
- Can result in monetary damages as against the municipality through the human rights complaint process.

# MANAGING LIABILITY AND RISK



## Policy and Operational Decisions

- The law distinguishes between policy and operational decisions
- Municipalities are protected from liability for policy decisions





## Policy and Operational Decisions

### **Policy**

- The determination whether or not to do something
- Exercises of discretion based upon social, political or economic factors

### **Operational**

- How the activity is carried out
- Practical executions of policy decisions



## Case Studies in Municipal Liability

### ***Campbell v. Bruce (County) (2016 ONCA)***

- Municipal bike park
- Cyclist fell from obstacle, quadriplegic
- Court of Appeal's decision focused on failure to post proper warning signs, negligent promotion of the park, failure to adequately monitor risks and injuries at the park, and design deficiencies



## Contractual Protections

- Drafting Techniques and Considerations
  - Protective Provisions
  - Defining the Scope of Work
  - Default and Termination
- Leases vs Licenses
- Contract Administration



Contractual Protections

## **Drafting Techniques and Considerations**

### **Protective Provisions in Leases and Rental Agreements**

- Indemnities
- Insurance
- Security
- Limitations of Liability
- Compliance with Regulatory Requirements (AGLC)

## Contractual Protections

### Leases vs Licenses

- Lease is a grant of exclusive possession.
- License is a generally non-exclusive right to use the property for a specific purpose.
- When to use lease vs license?

## Contractual Protections

### **Drafting Techniques and Considerations**

#### Defining the Permitted Uses of Facilities

- If uses are clear, risks (and liabilities) are clear

#### Default and Termination

- Remedies for default
- Termination for cause or convenience



## Contractual Protections

### **Contract Administration**

- Importance of having current agreements, in writing
- “Entire agreement” clauses narrow the scope of potential claims
- Contract correspondence and record keeping can significantly impact litigation



## Contractual Protections: Waivers and Releases

- Courts may be reluctant to enforce waivers and releases against sympathetic claimants
- Enforceability will depend on language, format and procedure



## Waivers and Releases

- Waivers and releases do not apply to risks that were not in the contemplation of the parties who signed the document
- “Where a defendant seeks to avoid liability on the basis that a claimant voluntarily assumed risk of the defendant’s negligence, the defendant must establish that the claimant knowingly assumed that risk and waived any legal right of action arising from that risk.”





## Waivers and Releases

- In order to rely upon a waiver or release must demonstrate:
  - Claimant read and understood contents prior to signing;
  - Reasonable steps were taken to bring the contents and implication of the document to the claimant's attention;
  - Terms sufficiently broad to cover alleged misconduct, and;
  - Negligence specifically excluded



## Waivers and Releases

- Did the loss or damages result from an “unexpected” risk?
- Was the document signed freely?
- Did the claimant read and understand the document?
- How much time was the claimant given?
- What was the claimant’s sophistication and familiarity with contracts?
- To what extent was the claimant involved in similar activities?



## Waivers and Releases

- A waiver or release will be strictly construed against the party who draft the document
- Words will be given their plain and ordinary meaning
- Effective waivers and releases should identify (non-exhaustively) the types of risks a person is accepting by entering a facility or participating in an activity
- Similar considerations arise with respect to signage in and on municipal properties and facilities

## Permitting

- May require special event permits through bylaw
- Muni should have full discretion to revoke
- Important to have right to impose conditions
- Conditions should include:
  - Insurance
  - Waiver and Release
  - Security deposit?



## Surveillance

- **Once a public body collects personal information:**
  - It should be accessed on a “need to know” basis, and only for the purpose for which it was collected,
  - It should be maintained securely and accessed only by authorized persons,
  - It should be retained only for as long as is necessary to meet the purpose of the collection,
  - Persons safeguarding the information should be subject to rules, protocols, etc., and
  - Sensitive information should be maintained separately from more general information.



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