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Hiring: Getting it Right Before it Goes Wrong

Severance/Notice Clauses

**The Alberta Municipalities
2025 Public Risk Conference**



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Presented by:



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The Basics of Severance Liability on Termination of Employment



The Basics

- Non-union employees can be terminated without cause by providing advance notice or severance pay in lieu of notice
- An Employer can make an express condition at the time of the offer of employment agreement to a specified amount of notice or payment in lieu of notice
- In the absence of an express written employment agreement at the time employment is offered and accepted addressing how much this notice or severance will be, the Courts imply their own view on reasonable notice or payment in lieu (common law liability)



Options for Severance Clauses

- The minimum statutory requirements of the *Alberta Employment Standards Code*
- Any lump sum or formula can be applied, so long as it complies with the minimums of the *Employment Standards Code*
- For example, expressly adopting and referring to the minimums in the *Employment Standards Code* (Sections 56 and 57) to a formula such as 2 weeks per year of service pro rata to a maximum of 6 months
- Ensure wording is clear in terms of whether severance is base wages/salary or inclusive of benefits, and if there is a benefits component, how this is calculated



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Classic Ways Employers Invalidate Their Severance Limitation Clauses



Classic Errors to Avoid

- Employee offered and accepted employment prior to being given their contract with the severance clause
- A general reference to the Employment Standards without referring expressly to the minimum standards and ideally sections 56 and 57 of the *Employment Standards Code*
- Letting the employee start work prior to signing the letter of hire or contract with the severance clause
- Failing to advise the employee to seek legal advice prior to signing the offer with the severance clause or not providing fair time for the employee to do so



New or Complex Invalidation Risks for Severance Clauses

- Employee changes position without express prior agreement to apply prior severance clause to a new role
- Attempting to expand the definition of “just cause termination”
- Any wording that could be argued in any potential circumstance to violate any statutory legal requirement (*Dufault v Ignace (Township)*, 2024 ONCA 915)
- Repudiation of the employment contract (including the termination provisions) through an employer’s conduct, both pre and/or post-termination



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Take Away Tips



Take Away Tips

- This is a very important tool in every employer's toolbox and when used correctly can save any employer hundreds of thousands of dollars in severance over the coming years
- If you aren't using a clear notice/severance clause for your non-union hires, we strongly recommend you seek legal advice to do so with your hires moving forward
- Even if you have been using terms of hire which have such a clause, if you have not received specific advice or review of that clause within the last year, we recommend you do so to potentially update the wording due to quickly evolving caselaw
- Setting this up properly means you will have more time and money to spend on your good employees rather than spending too much money on walking poor employees out the door



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QUESTIONS?

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Insurable Values in Uncertain Times

Presented By: Devin Baker, B.Comm
Manager, Business Development

PRESENTATION SUMMARY

- **Rampant Inflation** - How we got here
- **Big Picture** - General economic indicators
- **State of construction industry** in Canada
- **Cost trends** for Building Materials & Components – what is the impact?
 - Building Construction cost trends by various sources
 - Building Construction costs – what can we conclude?
- **Cost trends** for Machinery and Equipment – what is the impact?
 - Machinery and Equipment cost trends by various sources
 - Machinery and Equipment costs – what can we conclude?
- **What does the future hold?**

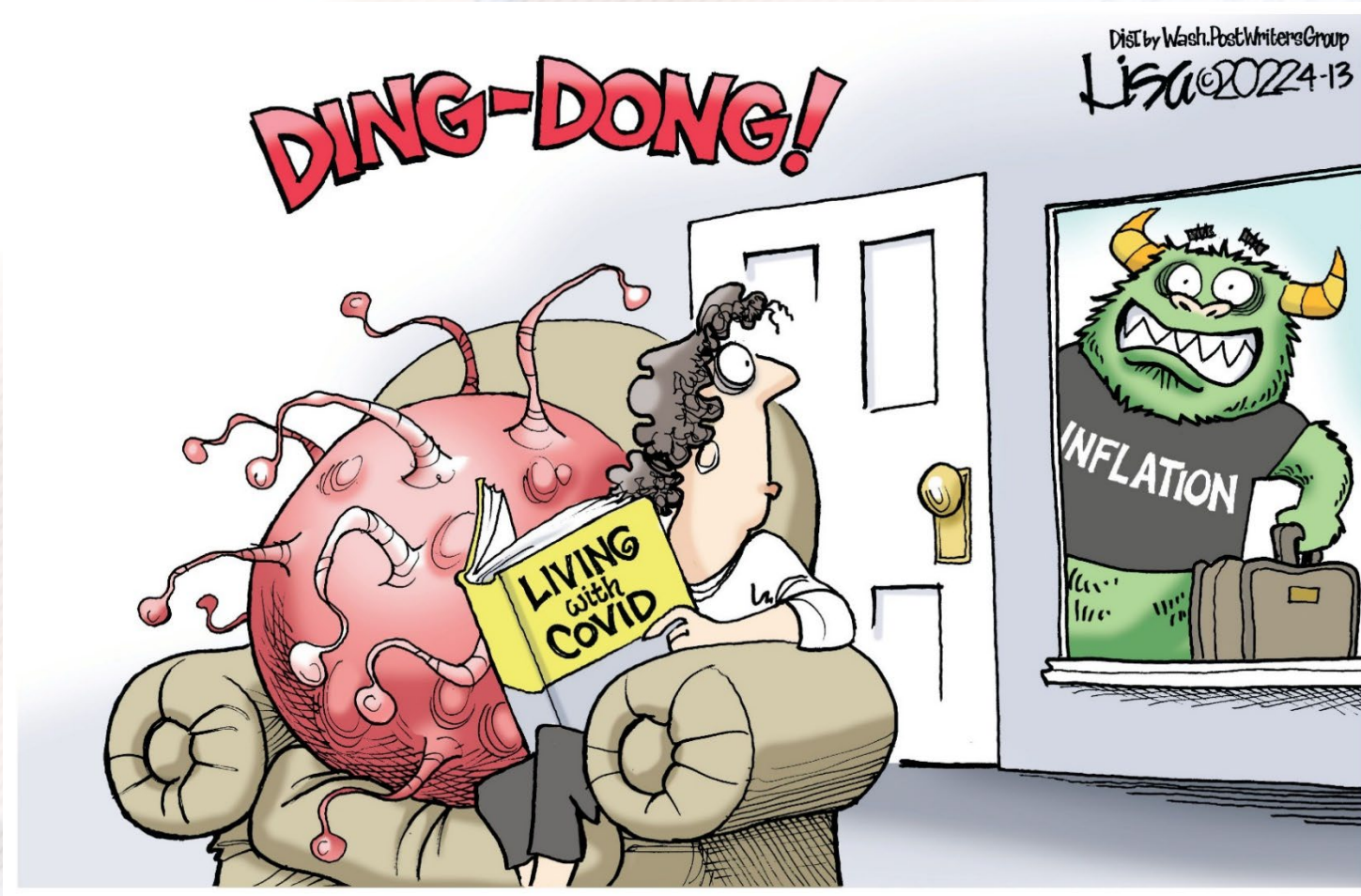


RAMPANT INFLATION



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COVID-19








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TARIFFS



Big Picture - Main Economic Indicators - Canada

As at: March 2025

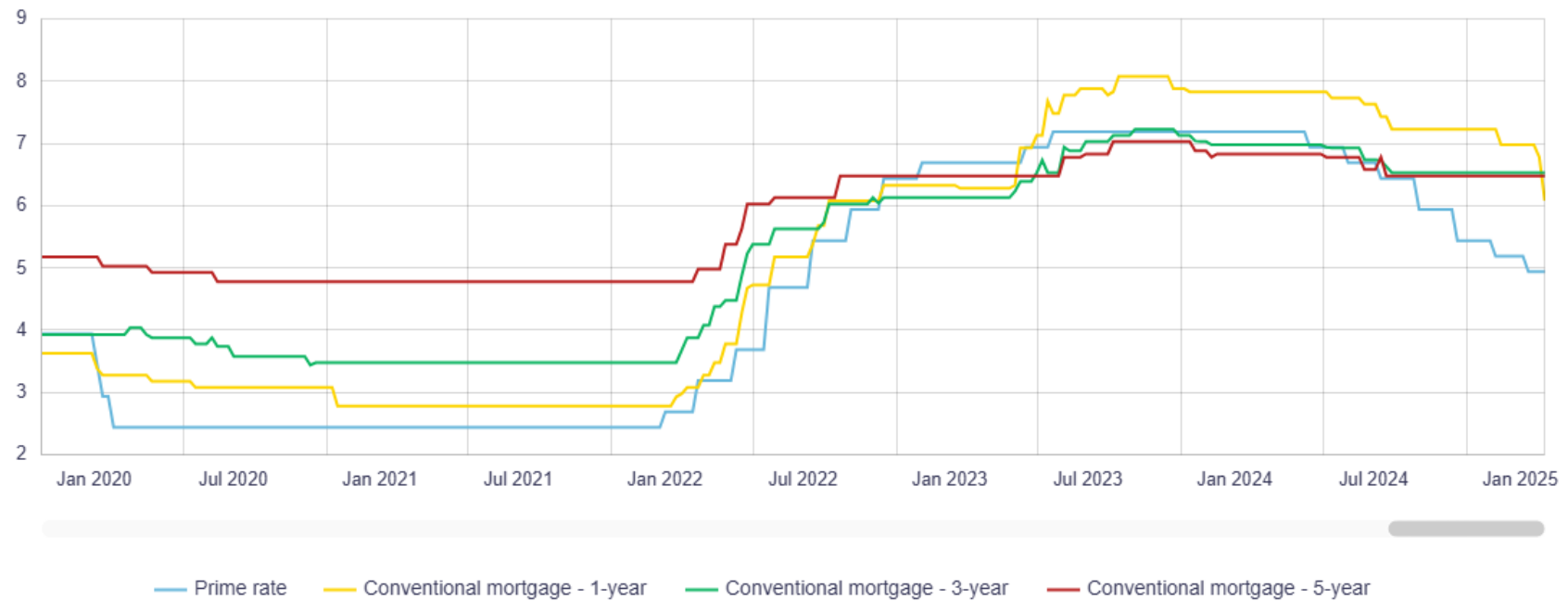
Economic Indicators	Units of Measure (Annual %/Amount)	
Consumer Price Index (CPI):		2.6%
Producer Price Index (PPI):		0.4%
2024 Projected Annual Deficit:		\$61.9 Billion
Unemployment Rate:		6.7%
Central Bank Interest Rate:		2.75%

BIG PICTURE

Interest Rates

Interest rates posted for selected products by the major chartered banks

Weekly Wednesday, rates in percentage



Source: Bank of Canada



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STATE OF THE CONSTRUCTION INDUSTRY IN CANADA



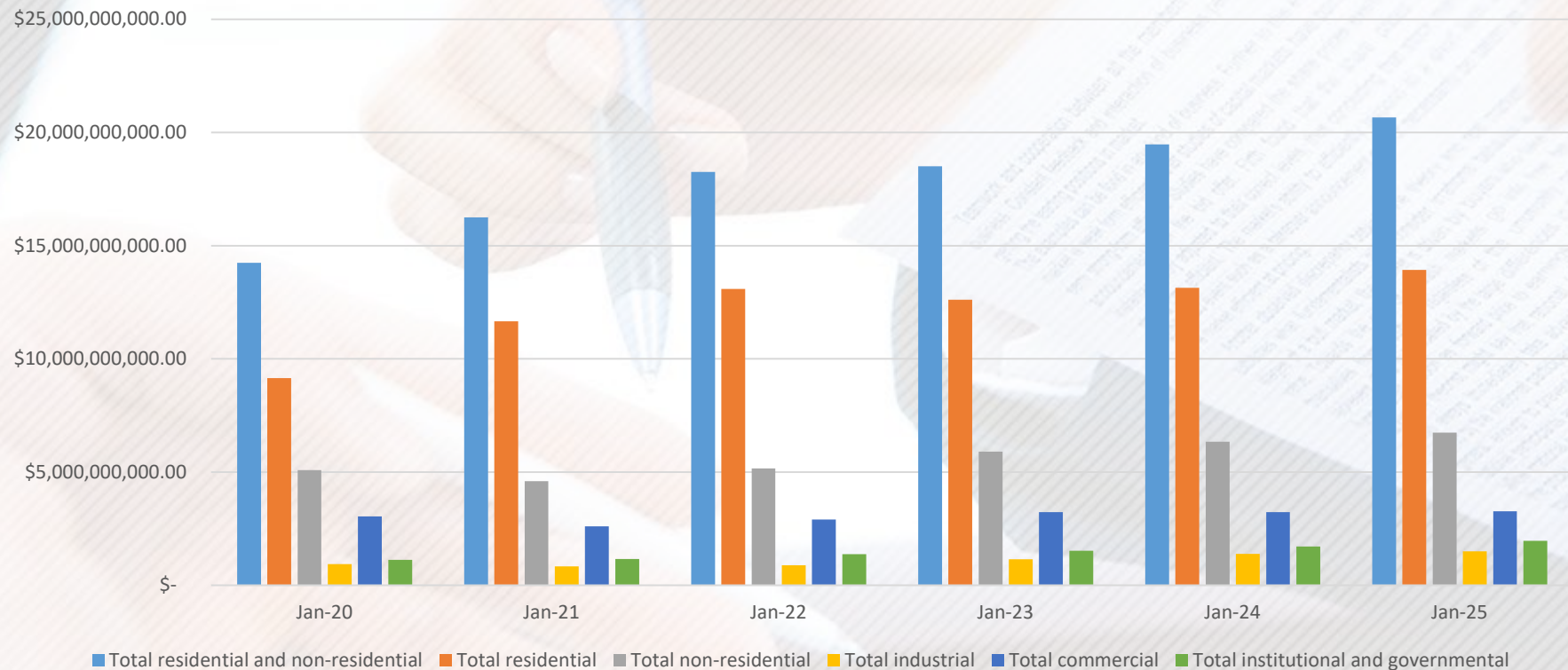
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COST TRENDS: LABOUR



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CONSTRUCTION INDUSTRY IN CANADA



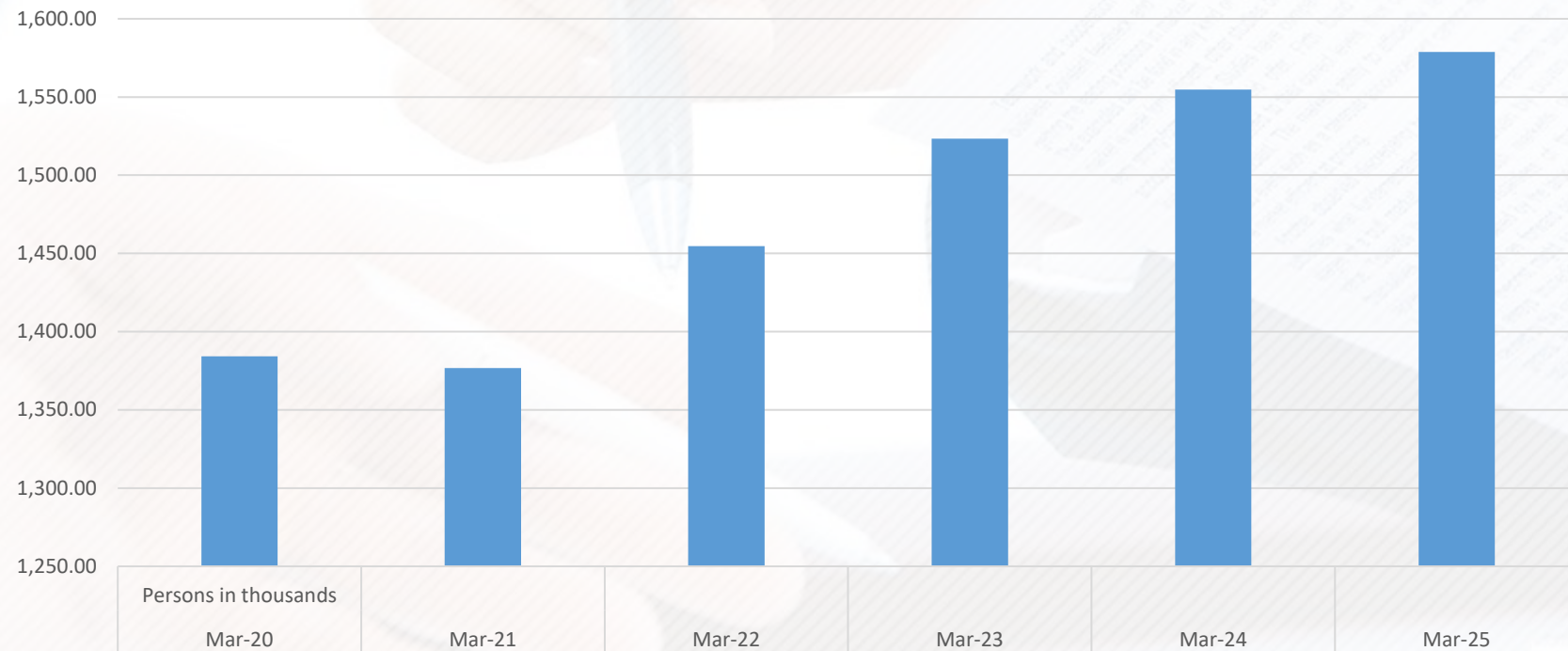
Source: Statistics Canada. [Table 34-10-0175-01 Investment in Building Construction](#)



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CONSTRUCTION INDUSTRY IN CANADA

LABOUR FORCE (Construction Industry) - CANADA



Source: Statistics Canada. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410002201>



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INITIAL CONCLUSIONS

- Construction investment has remained strong despite increased project costs. Sustained level of investment despite higher costs has meant fewer overall projects and demand is starting to build up.
- Construction industry workforce has rebounded
 - Labour represents around **30%-40%** of total costs in construction
 - 2022 – Labour Costs increased at an estimated **4%-6%**
 - 2023 – We saw a slow down in the pace of increase
 - 2024 – Starting to see the stabilization in costs associated with labour

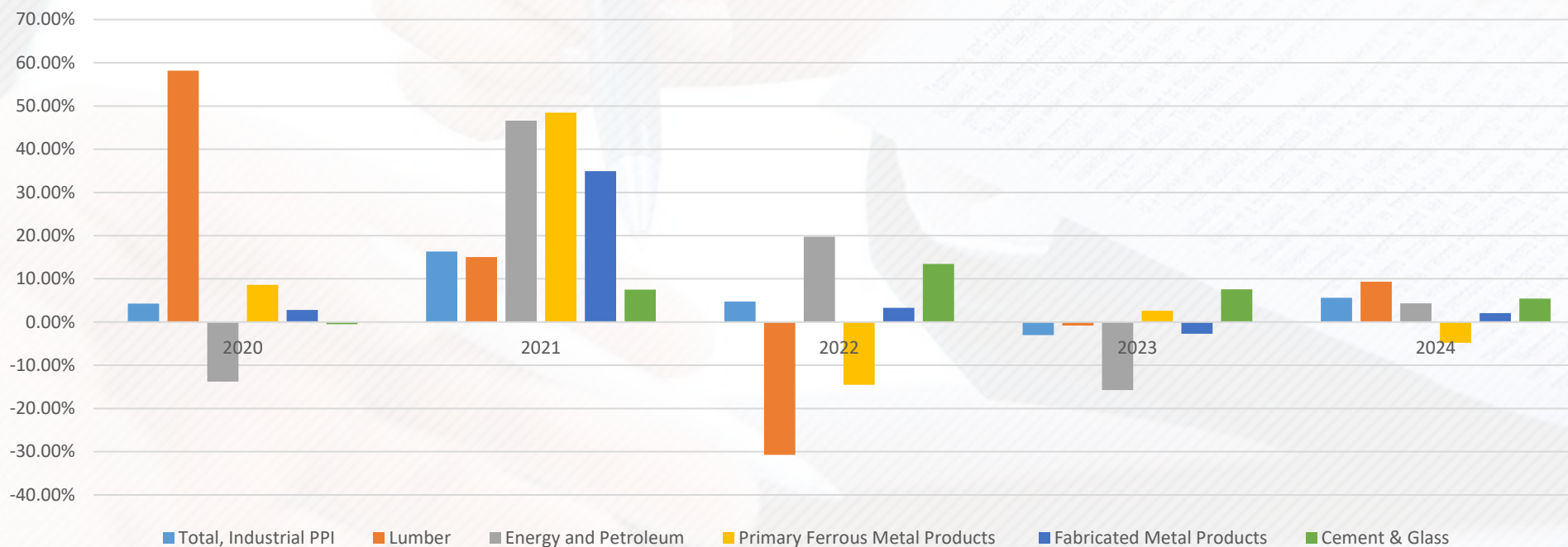


COST TRENDS: MATERIALS



COST TRENDS: BUILDING MATERIALS

INDUSTRIAL PRODUCT PRICE INDEX (IPPI) - CANADA



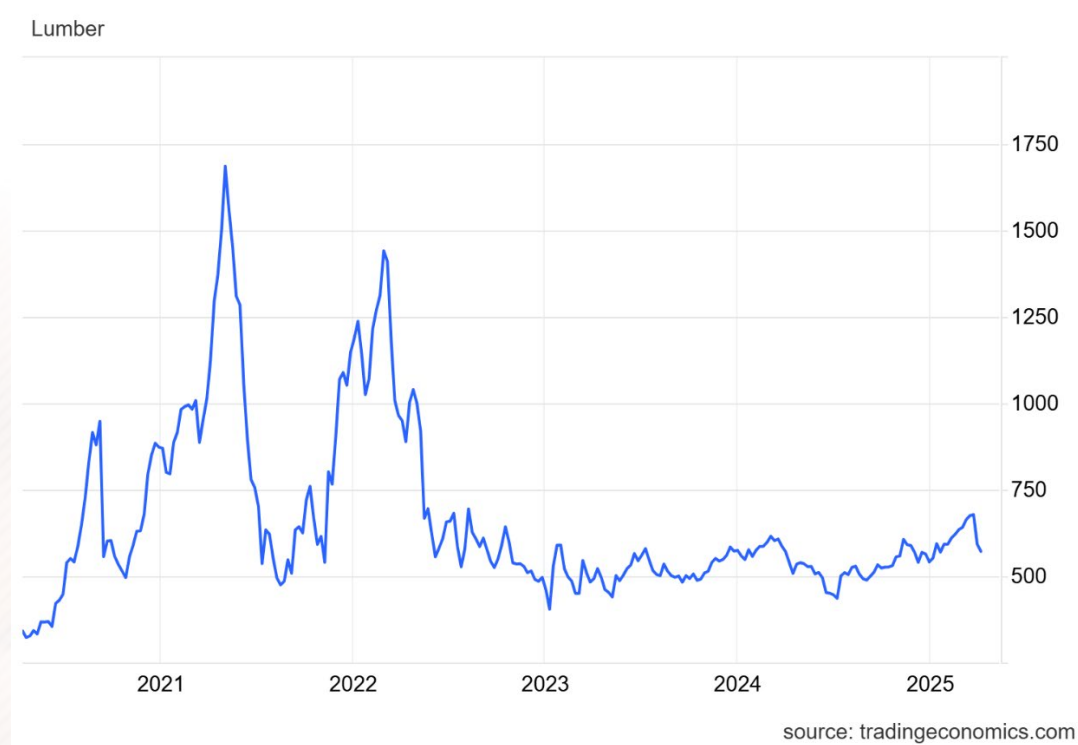
Source: Statistics Canada



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COST TRENDS: BUILDING MATERIALS

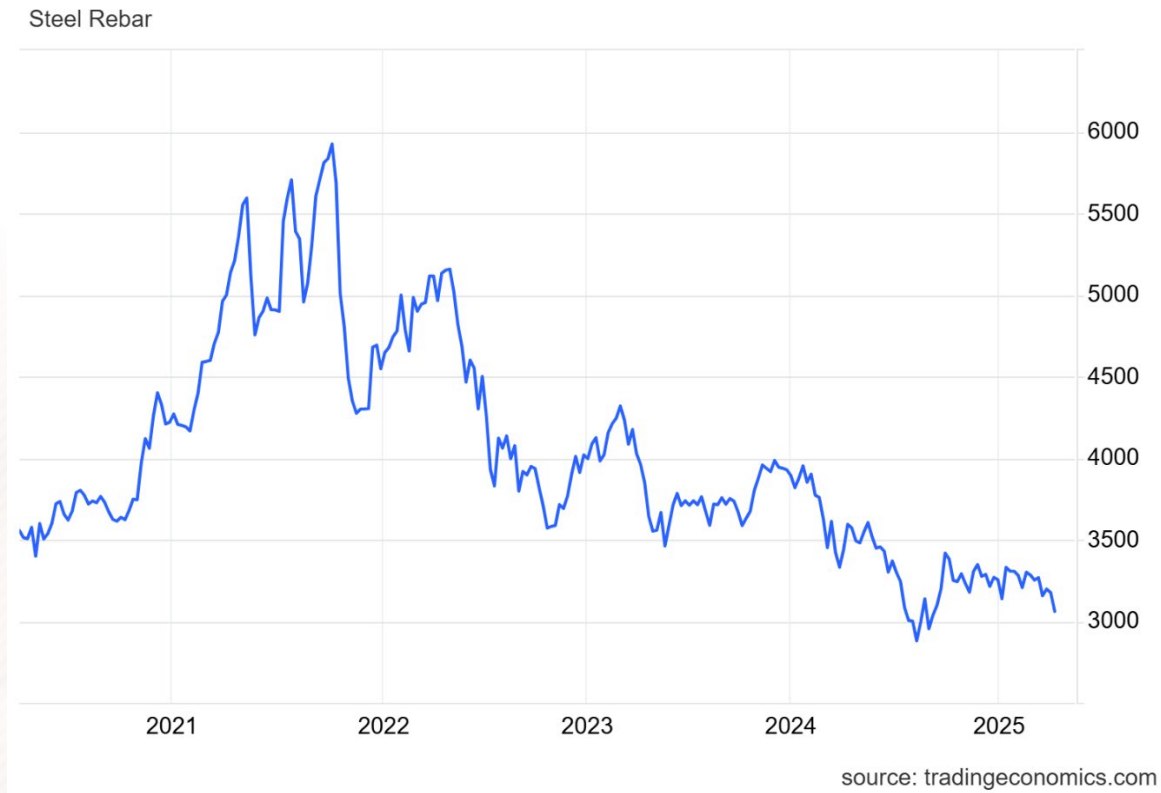
CONSTRUCTION MATERIAL COST CHANGES - LUMBER



Source: Trading Economics

COST TRENDS: BUILDING MATERIALS

CONSTRUCTION MATERIAL COST CHANGES - STEEL



Source: Trading Economics



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CONCLUSIONS



CONCLUSIONS

Construction materials represent approximately **50%-60%** of total building costs

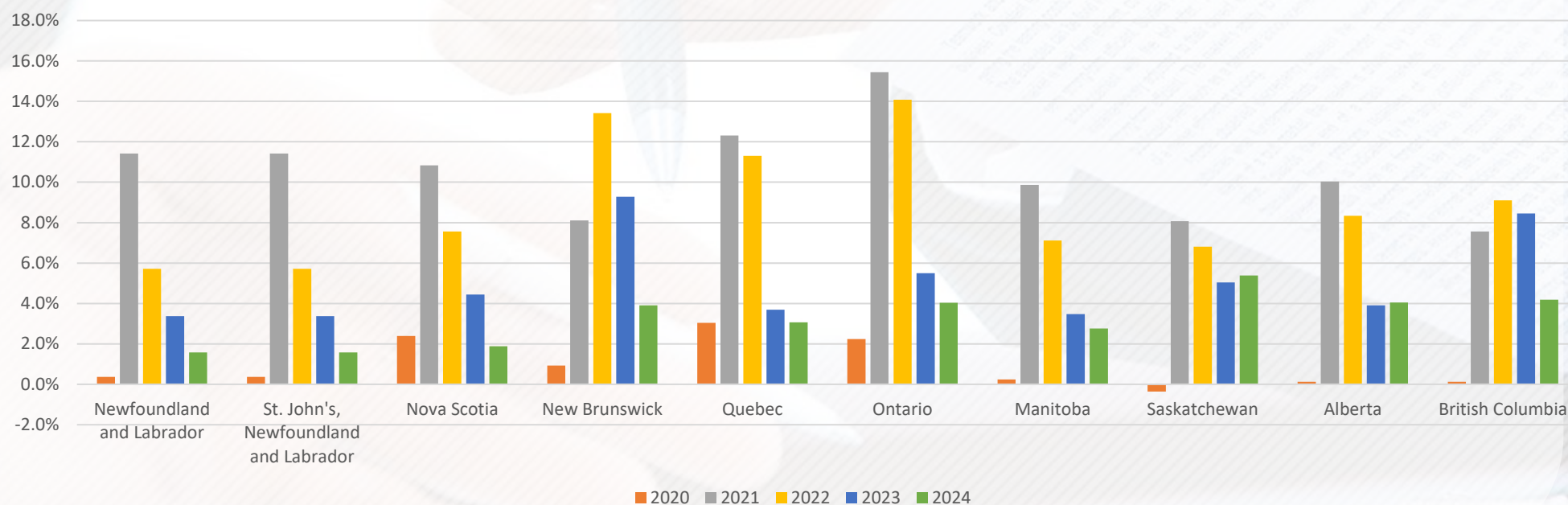
- 2021 – Construction materials increased an average of **25%-30%**.
- 2022 – Construction materials continued the increase on an average of **15%-20%**.
- 2023 – Saw a stall or beginning of pull-back in construction material prices.
- 2024 – Move to stability with a return to pre-COVID material values .



COST TRENDS REPORTED BY VARIOUS SOURCES

COST TRENDS: BUILDINGS

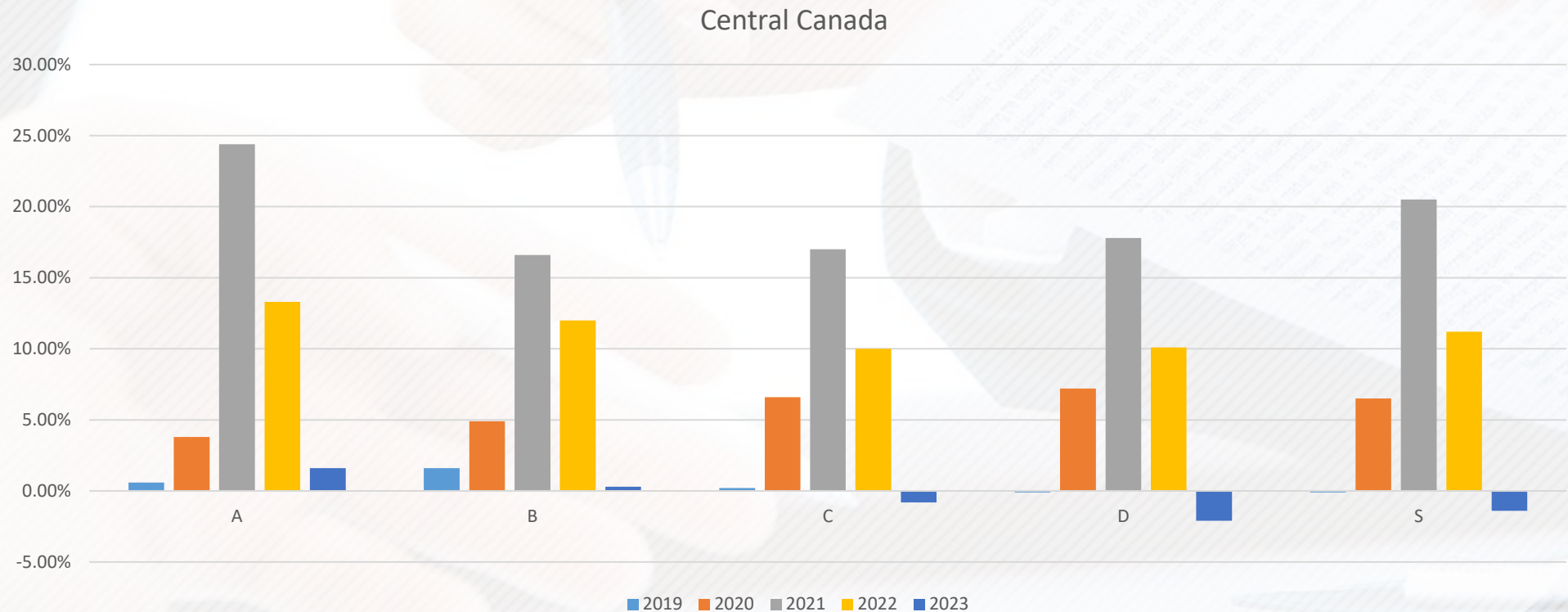
COST INCREASES FOR NON-RESIDENTIAL CONSTRUCTION Stats Canada



Source: Statistics Canada

COST TRENDS: BUILDINGS

COST INCREASE FOR BUILDING CONSTRUCTION Marshall and Swift



Source: Marshall and Swift

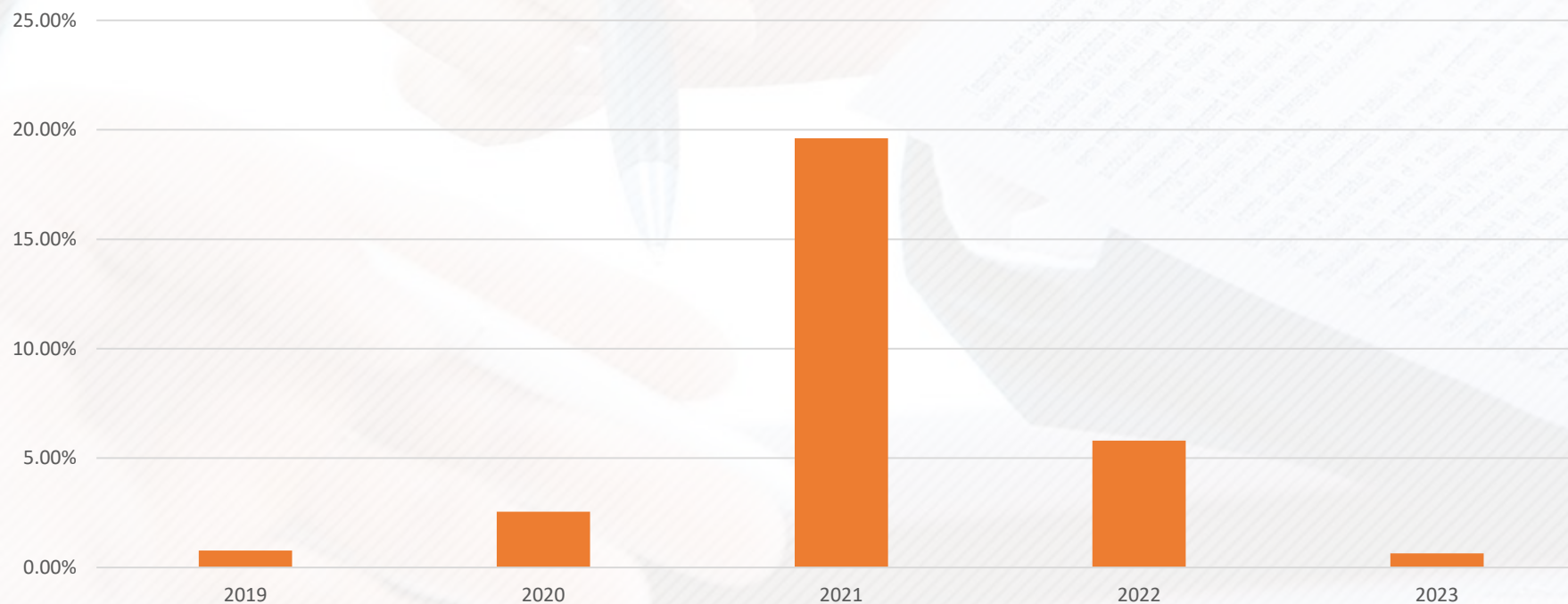
Construction Cost Ranges

Occupancy	Cost Range Per Square Foot (2024 - CDN Dollars)
Condo/Strata:	\$350- \$450
Educational Property:	\$500 - \$800
Airports:	\$800 - \$1,100
Bus Terminals/Garages:	\$400 - \$500
Fire Departments:	\$600 - \$900
Police:	\$500 - \$600
Library:	\$500 - \$800
<u>Recreation Buildings:</u>	
Ice:	\$400 - \$600
Aquatic:	\$600 - \$900
Multi-Use Facility:	\$550 - \$1,100
Museum:	\$550 - \$900

Source: Various External & Suncorp

COST TRENDS: MACHINERY & EQUIPMENT

EQUIPMENT COST INDEXES: National Average Marshall and Swift

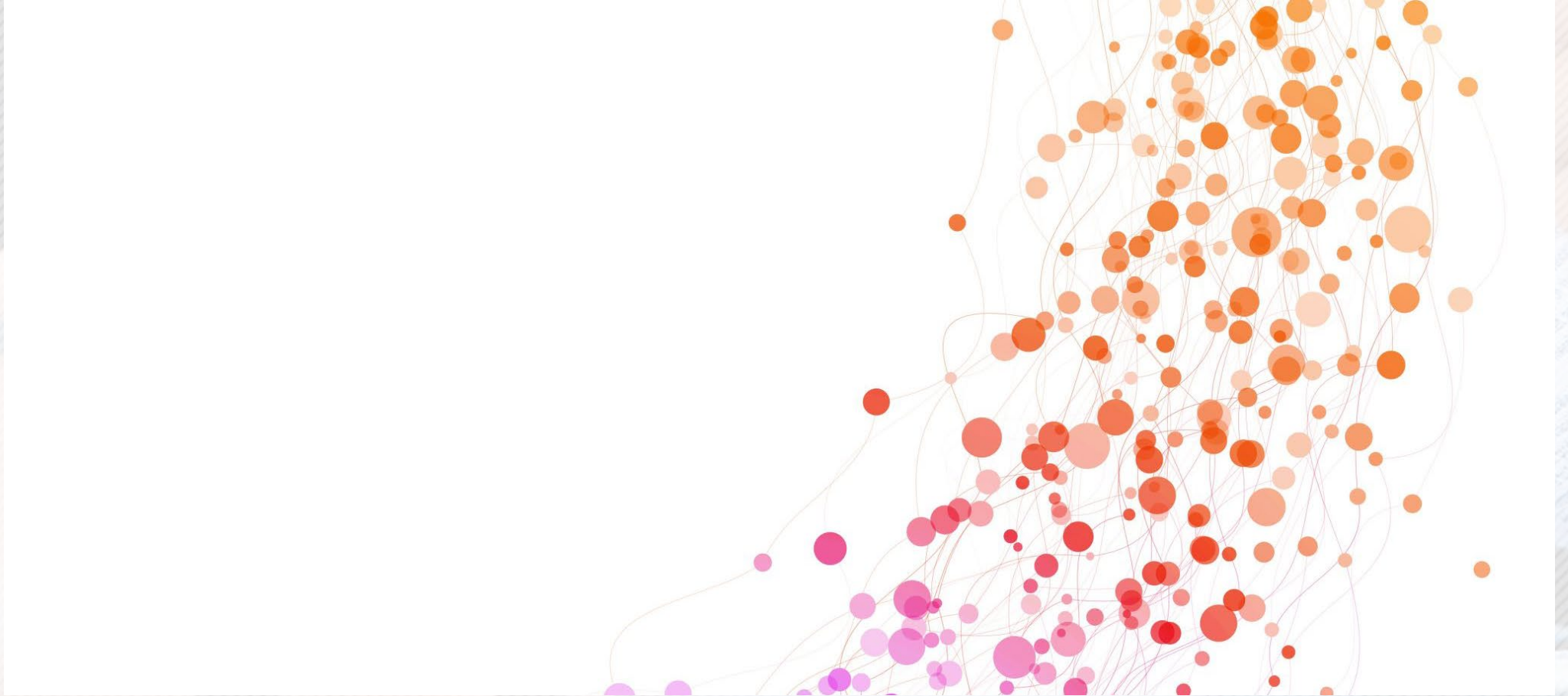


Source: Marshall and Swift



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CONSTRUCTION COSTS CONCLUDING THOUGHTS



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CONSTRUCTION COSTS CONCLUDING THOUGHTS

- All sources reporting significant building construction cost increases for 2021 & 2022
 - 2021 - Construction cost increase in the range of 12-18% depending on Construction Type and Location
 - 2022 - Construction cost increase in the range of 10-12% depending on Construction Type and Location
- The pace of increase in 2023 & 2024 slowed.
 - Raw material prices have returned to pre-covid levels
 - Supply backlogs have generally caught up
 - Gradual easing of interest rate increases starting to make on new projects viable.



M&E COSTS CONCLUDING THOUGHTS

- Cost increases were less than buildings, but still significant.
- Direct relation between Cost of Materials & Machinery and Equipment costs.
- Machinery and Equipment cost location less of a factor than for buildings (except remote sites)



INSURANCE VALUATIONS IMPORTANT POINTS

?



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WHAT IS AN INSURANCE APPRAISAL?

- Performed by **Qualified Accredited Valuers**
- It complies to strict standards set and regulated by **National or International Appraisal Societies**
- A valuation can include **many types of property** (buildings, machinery & equipment, site improvements, rolling stock, inventory)



ESTABLISH CORRECT PREMISE OF VALUE!



- Historical Cost
- Net Book Value
- Market Value
- Allocated Purchase Price
- Liquidation Value



- Cost of Reproduction New
- Cost of Replacement New
- Cost of Reproduction New
Less Depreciation (AKA Actual
Cash Value)



Difference between Market Value and Insurable Values

What is the difference between Market Value and an Insurance Value anyways?

- Definition of Reproduction/Replacement New versus Market Value
- Insurance values looks at Material Costs and Labor Rates
- Market Value looks at competitive forces such as Supply/Demand and Scarcity
- Inclusions of the Valuation Can Differ i.e. Consideration of Land in Market Value or Demolition and Debris or Building Codes issues with Insurance Values

ESTABLISH CORRECT PREMISE OF VALUE

Assume we have a 10-year-old riding forklift truck
5,000 lb. capacity in good condition...



Original Cost:	\$25,000
Net Book Value:	\$8,300
Fair Market Value:	\$10,000
Orderly Liquidation:	\$5,000
Replacement Cost:	\$32,000
Actual Cash Value:	\$15,000
Scrap Value:	\$800



RISK TRENDS & BEST PRACTICES

OVERVIEW

What has been trending in risk?

- Wildfires
- Water Escape Plan
- Signage
- Carbon Monoxide Risk
- Political Risk



WILDFIRE

The Growing Wildfire Challenge

- Climate change and land-use changes are driving this trend, with extreme wildfire activity projected to increase significantly.
- Alberta is experiencing more frequent and extreme wildfires, particularly in the Wildland-Urban Interface - the area where wildland vegetation meets or mixes with human development, such as homes, businesses, and infrastructure
- Risk Reduction = Loss Prevention: Proactive mitigation leads to fewer claims and reduced severity of wildfire-related losses.



WILDFIRE

Wildfire Mitigation and Resources

- At a building level:
 - Vegetation Management
 - Reducing flammable vegetation from around your building
 - Construction
 - Roof, siding & chimneys/vents
 - Storage



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WILDFIRE

Training and Evacuation

- Who is in charge?
- What are their responsibilities?



WILDFIRE

Air Quality

1. Monitor air quality frequently
2. Educate employees, supervisors and managers
3. Update your emergency response procedures
4. Develop control measures to protect outdoor employees
5. Take steps to protect indoor employees from smoke polluted air



WILDFIRE

Emergency Preparedness

- It is unsettling to think about but with how quickly evacuation notice can be sent it is wise for people to think about what might be needed in the event of an emergency similar to an earthquake kit.
- Survival Essentials
- Safety & Protection
- Miscellaneous/Additional Considerations



WATER ESCAPE PLAN

The Risk

- One of the most frequent and costly property claims that arise involve water.
- Losses can stem from a slow undetected leak or a sudden burst that occurs during operation or after hours.
- It is not mandated that every building have a plan in place, but we believe there is value in even something basic. The goal should be to have a process that outlines the a few key elements and ensure there is someone designated in charge of it.
- After leaving here ask yourself:
 - Does our municipality or each building/facility have some kind of plan?
 - If not, who in your organization or at the building should create a plan?



WATER ESCAPE PLAN

Framing a Plan

1. Determine who will oversee ensuring the plan is followed
2. Identify and train staff
3. Create a water valve isolation map
4. Ensure there is clear signage
5. Testing schedule
6. Outline the steps to be taken in the event of water escape.



WATER ESCAPE PLAN

Framing a Plan

- Other items that can be included in a plan are:
 - Leak detectors or sumps (depending on location) .
 - Develop and implement a roof inspection program that includes a quarterly review:
 - Check for pooling (especially after rain)
 - Check roof drains, downspouts (including grading at the ground level) for clogs, slow flow or leaks
 - Vacant or winter shut down process
 - Develop winterization plan which would include turning off water and/or draining water lines.
 - Building envelope inspection schedule could also be developed



LEAK DETECTION

Options

- Localized detectors
- Modify current systems
- Stand alone companies



SIGNAGE

Managing Liability: Signage Types

- Rule and Regulations
- Warnings
 - Acceptance of Liability
- Notification of Hazards/Restricted Area
- Exits
- Life Safety/First Aid
- Facility Map



CARBON MONOXIDE RISK

Monitors & Detectors

- CO monitors/detectors are increasingly in the news due to their role in measuring indoor air quality, particularly in relation to ventilation and potential health impacts
- Monitors
 - Uses: knowing the level of CO in a space helps the owner understand the buildings ventilation. This is important to know for CO and for illness transmission – less ventilation increases the risk of each
 - E.g. Since 2022 West Vancouver Memorial Library, the North Vancouver District Public Library (NVDPL) and Peterborough, Toronto Public Libraries are stocking CO2 monitors - If you monitor, you have more information on how to address ventilation
- Detectors
 - Uses: alarms will advise when levels get too high. This knowledge will allow staff to evacuate the space until the source of the leak or proper ventilation can be addressed.



CARBON MONOXIDE RISK

Health Impact, Requirements & Next Steps

- Symptoms
 - Headache, dizziness, weakness, nausea and vomiting, rapid heartbeat, shortness of breath, seizures, chest pain, disorientation, and loss of consciousness
- Universally in Canada, most provinces and territories require CO alarms in residential occupancies and mandate where they should be placed but not in commercial buildings.
- Why don't they speak about commercial buildings?
- What to do next?
- Importance of Regular Inspection/Replacement
 - CO alarms should be replaced according to the manufacturer's instructions, typically every 7-10 years



POLITICAL RISK

Civil Unrest

1. What is civil unrest and why is it important for the insurance industry?
2. What are the major drivers shaping social unrest over the next 10 years?
3. What can you do to manage the risk?

POLITICAL RISK

What is civil unrest and why is it important for the insurance industry?

- 'Civil unrest' is an umbrella term for a wide spectrum of phenomena, and although there is no commonly agreed United Nations definition the term is used widely among United Nations agencies, funds and programs, particularly to describe violent and non-violent group acts.
- Civil unrest is generally understood to include limited political violent (acts of terrorism, individual assassinations, etc.), sporadic violent action (riots), or non-violent or mildly violent collective action (protests, demonstrations, etc.) – all of which tend to take place during times of peace.
- Escalation can lead to property damage and additional cost due to loss of business or the need for closure.

POLITICAL RISK

Drivers

- High cost of food, shelter, energy
- Rising economic inequality
- Failure to resolve social injustice issues
- Social media and capacity to mobilize

POLITICAL RISK

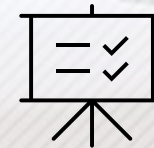
What can you do?

- Emergency action plan
- Threat analysis and security audits on a regular basis
- Staff training
- Ensure capacity for communication with staff
- Standard Security
- Understand what your insurance will and will not cover

SUMMARY

Risk in an uncertain environment

- We don't know what lies ahead but we do know that risks will continue to overlap, climate change impacts are increasing and uncertainty in our political and economic environment seems to be the new normal.



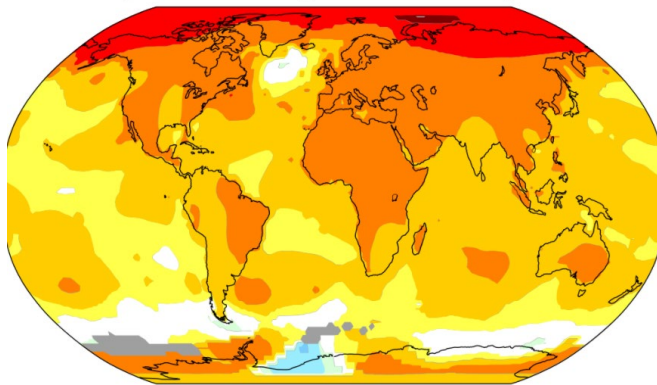
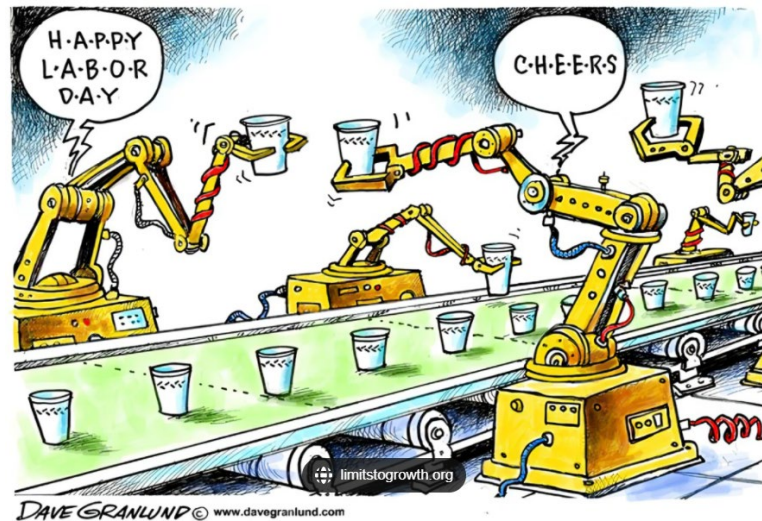
FINAL THOUGHTS



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Final Thoughts – What's Next?

WELCOME TO THE AGE OF UNCERTAINTY!



QUESTIONS?



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LAWSUITS 101

or
How I Learned to Stop Worrying
and Love Litigation

May 1, 2025



Introduction

- Lawsuits can be unpredictable, lots of different procedural things can happen, impossible to cover all potential litigation steps in one session
- This presentation covers the first few steps of a typical lawsuit faced by our members for matters such as:
 - Slip and falls
 - Breach of contract
 - Wrongful dismissal
- We are covering actions in the Court of King's Bench, not Court of Justice, AKA small claims court



Scope of the Presentation

- Not going to cover settlement negotiations, mediations, trial, court applications
- Goal is to give you a roadmap for the early stages of a lawsuit and provide guidance on how you can respond most effectively
- Going to use a fictitious lawsuit as an example: a resident with a randomly generated name (Dan Jackson) has slipped in the parking lot of a bingo hall owned by the Town of Albertaville and sued for damages

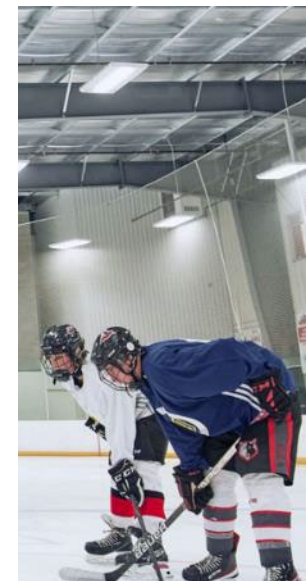
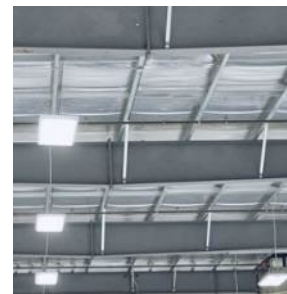


Agenda

- (1) Pleadings
- (2) Document Disclosure
- (3) Questioning
- (4) Questions



Part 1: Pleadings



Statement of Claim

- Lawsuits are typically started by filing a Statement of Claim at the courthouse
- This document contains the following information:
 - The parties to the lawsuit: who is suing (plaintiff) and who is being sued (defendant)
 - The cause of action alleged by the plaintiff (negligence, breach of contract, etc.)
 - The facts the plaintiff relies on to prove the cause of action
 - The remedy the plaintiff is seeking (almost always money)

Statement of Claim

Continued

- Often template documents, especially in slip and fall or other personal injury cases
- Tendency is to name multiple defendants, allege all sorts of wrongdoing and claim an exorbitant amount in damages
- Not meant to be offensive, just plaintiff's counsel covering their bases
- Sets the scope of the lawsuit and determines what documents and witness testimony will be relevant later on
- Must be filed within two years of the date of loss, and served within one year of filing



Statement of Defence

- Document filed by the defendant setting out its version of events and why a court should reject the causes of action advanced in the Statement of Claim
- Often a template document that lists all possible defences
- Not meant to be offensive, just defence counsel covering their bases
- Must be filed and served within twenty days of the Statement of Claim being served, however this deadline is often extended by agreement of plaintiff and defence counsel

Notice to Co-Defendant

- Document filed by a defendant which states that another defendant should be fully or partially responsible for any losses suffered by the plaintiff
- Example: Dan sues Albertaville and snow removal contractor. Albertaville files a Statement of Defence stating it was not responsible, and a Notice to Co-Defendant stating that the contractor is responsible



Third Party Claim

- Document filed by a defendant to add a new party to the lawsuit that may be fully or partially responsible for the plaintiff's losses
- Example: Dan sues Albertaville (but not contractor). Albertaville files a Statement of Defence stating it was not responsible, then files a Third Party Claim adding the contractor to the lawsuit

Pleadings

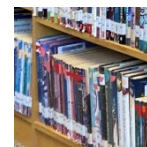
What Can You Do?

Don't panic!

- Report to your insurer immediately if you haven't already
- Consider anyone else who might be responsible and advise your insurer
 - Contractors, sub-contractors
 - Adjacent property owners
 - Individuals who created a dangerous situation
- Consider who in your organization might have knowledge of the situation and give that information to your insurer/lawyer
- Begin compiling relevant documents



Part 2: Document Disclosure



Affidavit of Records

- Parties in a lawsuit exchange relevant and material documents by swearing an Affidavit of Records
- This is a sworn document listing the relevant and material documents in a party's possession
- “Relevant and material” means a document that could help prove or disprove the version of events and cause of action alleged in the Statement of Claim
- Can also include documents that might point to the existence of other relevant and material evidence

Affidavit of Records

Continued

- Affidavit of Records lists documents disclosed to the other parties and documents for which privilege is claimed
- Privileged documents include communications with legal counsel and records created for the dominant purpose of litigation, neither of which need to be disclosed
- The plaintiff must serve their Affidavit of Records on the defendants within three months of the first Statement of Defence being served

Affidavit of Records

Continued

- If the defendant is an organization, its Affidavit of Records will be sworn by its representative
- The representative is the individual who represents the organization in the lawsuit. This means they swear the Affidavit of Records, attend questioning, and are often the main point of contact with legal counsel
- Defendant's Affidavit of Records must be served within two months of receiving the plaintiff's Affidavit of Records



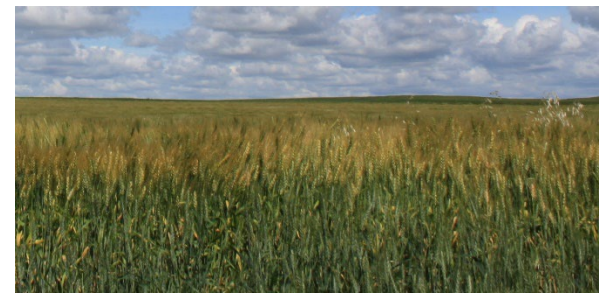
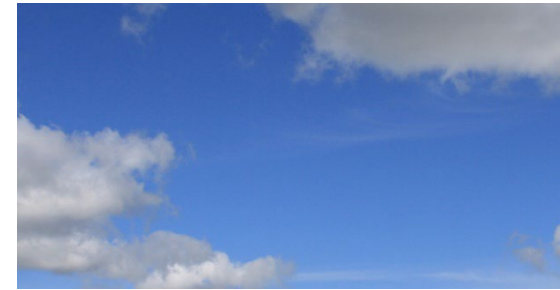
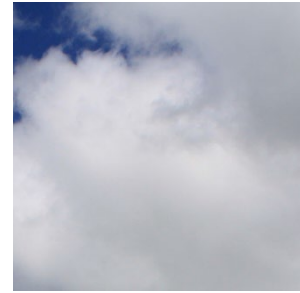
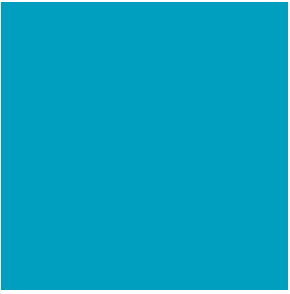
Document Disclosure

What Can You Do?

- Perform a thorough document search as soon as possible
 - Digital and physical files
 - Text messages
 - Email accounts (including for departed employees)
 - Records from online portals
- Ask everyone involved to perform a thorough search
- Store everything you find in one place
- Send absolutely every document that even remotely touches on the lawsuit to your counsel, let them assess whether it is relevant



Part 3: Questioning



Questioning of Defendant's Representative

- Plaintiff's lawyer asks the Defendant's representative questions under oath about anything relevant to the lawsuit
- The defendant's representative has an obligation to make themselves as informed as reasonably possible about the facts of the lawsuit
- Typically virtual, with a court reporter present to make a verbatim transcript
- Defendant's lawyer is present to ensure that plaintiff's lawyer only asks proper questions and to object if they ask anything improper



Questioning of Defendant's Representative

Continued

- Defendant's lawyer cannot answer questions for the defendant and cannot assist them in answering questions or discuss their evidence with them during the questioning
- Questioning is focused on facts in the knowledge of the person being questioned, not opinions, theories, or suppositions
- Questioning of the defendant's representative will generally focus on liability: did the defendant do something wrong that harmed the plaintiff?



Questioning of Plaintiff

- Defendant's lawyer asks the plaintiff questions about anything relevant to the lawsuit
- Questioning of the plaintiff will focus on both liability and damages, i.e. what harm has the defendant allegedly caused to the plaintiff
- Counsel for both parties use the questioning process to assess the parties' credibility and how well they might do if they testified at trial. This is useful in assessing the risks of going to trial vs. settling the case early

Undertakings

- If during questioning a party
 - a) doesn't the answer to a question they should have known if they were reasonably prepared, or
 - b) it emerges that there are other relevant and material documents that have not been disclosed
- The questioning lawyer can ask for an undertaking to (a) answer the question in writing, or (b) provide the document
- The lawyer of the party being questioned will decide whether to grant the undertaking or refuse it

Undertakings

Continued

- Once the party being questioned obtains the information and/or record, their lawyer will prepare answers to the undertakings and serve them on the other party
- A party can be questioned on their answers to undertakings

Questioning

What Can You Do?

- **Don't panic.** Easy to get nervous, but once questioning gets started, it can actually be pretty boring!
 - Take time to prepare by:
 - Reviewing your documents and the other parties' documents
 - Speaking with people in your organization who have relevant information
 - Listening to your lawyer's advice and asking them any questions you have about the process
- Tell the truth, don't try to spin things favourably

Questions?

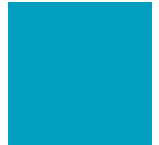


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 **Alberta
Municipalities**
Strength
In Members

Crime Insurance

Employee Theft and Social Engineering Fraud

May 1, 2025

Important Note

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Your Hosts



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Today's Topics

- What is Crime insurance?
- Crime Insurance Policy Attributes
- Why does Employee Theft Occur?
- Sources of Loss from Employee Theft
- Unique Exposures
- What is Social Engineering Fraud?
- Sources of Loss from Social Engineering Fraud
- Loss Examples



What is Crime Insurance?

- A packaged insurance policy offering protection for loss arising directly from Fidelity, Burglary, Robbery, Forgery, Computer Crime, Funds Transfer Fraud.
- Employee dishonesty insurance is the main insuring agreement and the main criminal threat to organizations.
- “Third Party Crime”, or “Employee Theft of Client Property” is a subset of Fidelity Coverage that occurs when the loss is *sustained by a client* of the organization.



Crime Insurance Policy Attributes

- First party loss (except for Third Party Crime)
- Single Loss Limit versus Aggregate Limit
- Loss Discovered versus Loss Sustained
- Named perils, not “all risk” or “all perils”



Why Does Employee Theft Occur?

- Opportunity: too much access or control over money or financial systems
- Need or Greed: financial pressures
- False Sense of Entitlement: the feeling that an individual deserves more than the organization offers them



Sources of Loss from Employee Theft

- It is important to remember that large employee theft losses are more often a series of small related transactions (“death by a thousand cuts”) than single large transactions.
- Organizations with greater complexity have higher exposure. As do organizations with high volumes of transactions, employees, vendors, or clients.
- Some examples include: skimming, billing schemes / kickbacks, payroll schemes, expense reimbursement schemes, cheque tampering, inventory theft.
- Insurer application questions tell a lot about where the losses come from.

There are typically several questions relating to segregations of duties, dual authorizations, and regular reviews. If one individual has too much authority, he or she can perform transactions without secondary approval or oversight.



Invoicing Scheme

Two employees of a large municipality orchestrated a false invoicing scheme. Employee 1 led procurement. They directed city business to a private rental sign company owned by a relative. Employee 2 approved the false and unsupported invoices for payment by cheque. Employee 2 received “gifts” from the private company. Approximately \$1.6M.



Stolen Products

An employee of a Canadian retailer stole \$2M in laptops and electronics from his employer over a 5-year period. The employee stole the products and sold them online, making \$750K-\$1M in personal profit. It allegedly started because he was unhappy with the company.



Too Much Authority

Chief Administrative Officer of a Manitoba municipality allegedly made 33 fraudulent transfers of funds for a total of \$515K, falsified bank statements, and faking a cyber attack to cover up the theft.



Unique Exposures

- Art or valuable collectibles
- Care, custody, control of client property or assets
- Commission sales
- Commodities
- **Diversified businesses**
- High cash exposure
- High portable inventory
- Narcotics / opioids / cannabis / pharmaceutical products
- Precious metals/gemstones
- Proprietary trading activity
- Scrap metal
- Warehousing / storage
- **Many locations** or foreign locations
- Financial distress



What is Social Engineering?

- Broadly, social engineering is the use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes.



Sources of Losses for Social Engineering Fraud

- Unlike Employee Theft, Social Engineering Fraud originates from outside of the organization.
- Usually, perpetrators purport to be a client, vendor, employee, or person of authority. They attempt to exploit the human psychology to manipulate people to divulge sensitive information or perform unauthorized actions.
- Phishing emails, phone calls, physical infiltration
- Tailored attacks - impersonation of trusted individuals (mimic CEO, video impersonations, etc.)
- AI is poised to enhance capabilities of Cyber criminals
- Supply chain attacks - compromise a third party to gain access to a corporation's network or information



Banking Information Change

A tech company placed an order for approximately \$200,000 in furniture for their new office. The original vendor provided the company with an invoice payable within 30 days of the sale, as well as their banking coordinates. A month later, the supposed vendor reached out to inform the company that their banking coordinates changed. They also attached the same invoice and requested the company pay 50% of the purchase price. The first payment was made. A week later, the company received another notice from the purported vendor with different banking instructions and their final account. The company paid the final invoice. A few weeks later, the actual vendor reached out to inquire on payment status as the original 30 days have passed. Once the company started investigating as to why the vendor did not receive payment, they noticed that the email address of the supposed vendor contained a small error. Payment was made to a threat actor, and the company fell victim to a social engineering fraud scheme.



Mock Invoice

A hardware store placed an order with a supplier they typically use. A few weeks after the order was placed, they received an invoice for payment by email. The email contained different banking instructions than the ones the company had on file, but the invoice was legitimate. An employee in the hardware store's finance department called the vendor at their known number to inquire about the change in banking information. The vendor supposedly confirmed that they did not change their banking information. Despite this confirmation, the employee sent the funds to the threat actor by mistake. Coverage was afforded under the SEF endorsement.



Imposter Manager

An employee in a municipality's accounts payable department received an email from his purported boss attaching an invoice for payment. The invoice came from a vendor the employee was not familiar with. The employee replied to the email asking for clarification, received a satisfactory response, and subsequently issued payment to this new vendor for approximately \$100,000. Later that day, he ran into his boss in person and informed her that the payment was made, as requested. His boss was confused. They investigated and realized there was a slight change in the boss's email address that the employee did not catch before the funds were sent.



THANK YOU





REYNOLDS MIRTH
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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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Thank you for
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