

At Time of Claim – Can Loose Lips Sink Ships?

Al, the City's Parks Manager, took great pride in the City's newly-developed waterfront. People were coming downtown to enjoy the walking trails along the river, have a drink at one of the outdoor patios, browse in the shops or simply sit on one of the benches and gaze at the river. The redevelopment had been a long time coming and Al's department was pivotal in the development of the river trail system.

A few years ago the unsightly roadway bridge over the river had been removed. Unfortunately, the two cement supporting piers were still there. One of these was 60 meters from shore and if accessed by a swimmer could serve as a diving platform. Al was concerned that someday somebody might decide to swim to the pier and then dive from it into the river. The water in this area was shallow.

Al's only consolation was that the shoreline was not conducive to swimming. It was rocky, overgrown with plant life and had collected some debris. Since the City had no complaints of injuries resulting from swimming in the area, the decision was made not to erect "No Swimming" signs or take any other steps to dissuade swimming in the area. But Al still had that uneasy feeling that one day someone would ignore the rocks, moss and debris and enter the water to head for the pier.

On an early, muggy August evening, Al's fear came true. A group of old friends had met at a downtown bar at noon.

"Tom" was home from school and the "old crowd" was together again. They were having a great time until the bar's manager asked them to leave. The other patrons were complaining about their rowdy behaviour. No problem, they'd take their business elsewhere. On route to the next "watering" hole, they walked passed the bridge piers. Tom decided he'd like to swim to the pier and have his picture taken while diving from the pier. He left his camera and clothing with the others. Being a strong swimmer, he swam against the strong tide and climbed up onto the 15 foot high pier. Calling for a picture he dove into the river. He didn't know the water was only three feet deep.

In the blink of an eye, Tom's world changed. Instead of going into his 3rd year of a four-year hockey scholarship at an Ivy League school, he was going into rehab. Now a quadriplegic, Tom had some feeling in his shoulders, biceps and hands, but absolutely no feeling below his chest. No longer would a hockey team depend on his ability to put the puck in the net. Instead he would depend on others to dress him, bathe him and feed him.

Al, like every other hockey fan in the City, knew about Tom. He was a local kid who had done well and had a bright future. The local media regularly reported on his progress south of the border. So, it was no surprise that the accident was picked up by both the local media and the newspapers in Tom's university town.

In the ensuing weeks, Al received a lot of calls about the accident. So, he didn't think much when another call came in asking questions about Tom and the accident. But somehow this call seemed a little different. Instead of focusing on the accident and the end of Tom's career, the caller focused on whether or not the circumstances surrounding Tom's accident were an isolated incident. Did people regularly swim to the pier? Did the City know that this was occurring? Did they try to end the behaviour or turn a blind eye?

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At Time of Claim – Can Loose Lips Sink Ships? *(cont'd from page 1)*

Al allowed the caller to question him instead of questioning the caller's identity and his interest in the accident. Al didn't realize who the caller was until he discussed the call with the City's insurance adjuster. Tom's family had hired a lawyer and the caller was a private investigator hired by the law firm.

Who are Private Investigators

Private Investigators (PI) are provincially-licensed individuals who carry out investigations for lawyers and other parties into the facts surrounding events such as accidents, marriage breakups and financial circumstances.

Private Investigators & Plaintiff's Counsel

In the case of accidents involving possible liability on public entities, the claimant's lawyer may engage a PI to gather evidence on the liability of the entity. This may include contacting roads foremen, public works employees, parks & recreation staff, etc. This may occur at any time after the accident, but, generally happens soon after.

We find this is happening more frequently than in the past as public entities become more common targets for injury litigation.

Information Sharing

Your staff and management should not offer any information to these PIs. If the information is offered, you can rest assured, if possible, it will be used against the entity. Information should only be supplied to investigators, adjusters, lawyers or other parties appointed by the Frank Cowan Company. This will put us in a position to mount the best defence to liability claims.

Instruct staff not to discuss accidents with anyone outside of the people appointed to handle municipal claims.

Staff should refer all inquiries to these individuals. Staff should be reminded that they must ask all callers to identify themselves and visitors to present identification.

PIs must identify themselves when asked. Always ask for this identification in the form of their license and ask whom they represent. If they represent the claimant or his/her lawyer, refer them to Cowan.

Obtaining your evidence, first hand, is the best way to build solid defenses to claims. Can loose lips sink ships? When it involves litigation, do you really want to find out?

Fireworks – Risk Management Concerns

As the long summer weekends approach, many Canadians are looking forward to celebrating with fireworks. They are a way of life and a form of festivity in many parts of the world. A well-run fireworks display can be both enthralling and entertaining for the viewers of the show.

Municipalities recognize the importance of this ritual, and many will be allowing or sponsoring fireworks displays. However, from a Risk Management perspective, there are concerns that should be addressed.

We will discuss three options most regularly used in municipal settings.

1. Family Fireworks – Municipal Display

These are the most common and are typically used in small celebrations where municipalities do not have sufficient budget for larger professional displays.

To keep residents safe, we recommend that municipalities:

- Provide residents with single or multiple wheel barrels or metal pails on a stable level surface at least 150' (feet) from combustibles such as dried grass, leaves or buildings.

- Inform the public by providing information about the safe distance and proper trajectory for each family. AT LEAST 150' (feet) clearance from the largest shell you intend to discharge.



Fireworks – Risk Management Concerns *(cont'd from previous page)*

- Keep a charged garden hose and fire extinguisher available for potential spot fires.
- Tell residents to keep their unfired product AT LEAST 50' (feet) from the firing area and preferably in a closed container.

2. Professional Fireworks – Municipally Fired

Often the Fire Department will choose to fire a show. The supervisor of the display must be licensed to Level 1 or better in order to purchase and/or discharge professional or display fireworks.

This person is also responsible to ensure that the show is operated in a safe manner for both volunteer staff and spectators.

The local Fire Prevention Officer or – in his absence – the display supervisor has the responsibility to stop a display if conditions are not safe.

Licensed supervisors and professional displays are subject to both municipal by-laws and federal regulations. The latter are numerous and cover clearances (which are substantially different from family fireworks), type and size of permitted shells, and whether or not they can be hand fired or electrically fired.

For more information and contacts on regulations visit the website of Natural Resources Canada – Explosives Regulatory Division at:
http://www.nrcan.gc.ca/mms/explosif/over/conus_e.htm

From a Risk Management perspective it is very important that the use of tobacco (smoking) and alcohol be banned from any area or operation involving fireworks displays.

3. Professional Fireworks – Professionally Fired

This is becoming more prevalent as the cost of fireworks and the regulations governing their use become more stringent.

If your municipality is contemplating a professional show you should ask to see the current license of the supervisor and proof of liability insurance of at least \$5 million - Inclusive Bodily Injury and Property Damage – with Certificates of Liability filed with the municipality.

Additional Tips – Safety First:

- Emergency Service's (such as fire, police, ambulance, first aid should be on site at the event).
- Fireworks should only be discharged in a large, open area at least 150' from cars, houses, spectators, trees, etc.
- Use a qualified, licensed individual to set off the fireworks.

For Safe Family Fireworks:

- Read and follow all label/packaging directions
- Have water on hand, such as in a bucket or running hose
- "Dud" fireworks should be soaked in water for 20 minutes then disposed in a metal garbage can – NEVER try to relight a "dud"
- Light only one firework at a time. Only adults should handle fireworks, never children. Discharge fireworks away from people, cars, buildings and trees.
- Sparklers are hot (1200F/650C) and can cause burns. Children must be supervised by an adult while using sparklers.
- Dispose of all fireworks in a metal garbage can after soaking them 20 minutes in water
- For additional tips contact your local fire department or the Office of the Fire Marshall of your province.

When a Claim Occurs

When a person suffers a loss, alleged to be as a result of the actions or omissions of the municipality, it is very common for the person to call their local member of council, alderman or mayor looking for answers and resolution. While this practice has been common in the past, we have noticed an increase in such communication in recent years. As a reminder, unfortunate as an injury is, not every incident that affects your citizens is a result of municipal negligence. Each and every case must be determined on its own facts.

In many circumstances an insurance recovery is wanted. In such situations, the terms and conditions of the insurance policy must be followed. The municipal liability policy agrees to pay on behalf of the municipality all sums for compensatory damages that the municipality becomes obligated to pay by reason of liability imposed by law. The conditions within the policy impose certain requirements upon the parties to the insurance contract.

Among them are the duties of the insured in the event of a claim, the investigation of the claim and the requirement of assistance and cooperation of the insured.

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ABC's of Claims

Adjusters appointed by your insurer are part of the claims process. Provide those with the information they require promptly.

Be proactive. Develop a claims protocol & appoint a municipal spokesperson with media training.

Contact proper authorities – police, fire, ambulance, insurer etc.

Do not dispose of damaged or salvaged property.

Eliminate any hazardous situations.

Follow the applicable legislative reporting mandates to the appropriate Provincial Ministry ie: spills to the Ministry of Environment.

Gain control of the claim at inception and proactively manage the process.

Have your claims protocol available to all employees and review it with them on a regular basis.

If required, call 911.

Just because the claimant says they're OK don't assume injuries haven't occurred. Follow your claims protocol.

Knowledge of a wrongful act should be reported to the insurer as an incident that may lead to a claim.

Leave the handling of the claim to the claims professionals.

Maintain confidentiality.

Never admit liability.

Obtain and record all information including names and contact information for witnesses.

Policies of insurance outline your obligations in the event of a claim. Know them. Follow them.

Quickly report claims while the facts are fresh.

Remember to never voluntarily assume any liability or settle any claim. You could become responsible for the full payment.

Statements of Claim should be forwarded to your insurer/adjuster immediately.

Take reasonable steps to protect property from further damage.

Under no circumstances release information to just anyone who asks.

Video and photograph evidence of the accident scene will last; your memory will fade.

When in doubt call 1-800-265-4000 and ask for Claims.

Xpect the media to call if the incident is high profile. Refer the media to the appropriate municipal spokesperson.

Your claims team is on your side. Don't hold back any information.

Zipper your lips if you're not the claims contact person. A loose lip might sink the ship.

When a Claim Occurs *(cont'd from page 3)*

The conditions within the policy impose certain requirements upon the parties to the insurance contract. Among them are the duties of the insured in the event of a claim, the investigation of the claim and the requirement of assistance and cooperation of the insured. The insured cannot admit liability nor take any actions that can prejudice the insurer's position or defence of the claim. Prejudicing the insurer's position can result in denial of the claim thereby requiring the municipality to rely on its own funds to pay monetary damages, investigation expenses and legal fees.

The initial contact with the constituent can impact the final resolution of the situation. In order to protect the municipality and the other taxpayers in the community, we recommend the following protocol:

- Listen and document the conversation.
- Offer empathy not monetary restitution.
- Do not admit fault.

- If appropriate, instruct constituents to report the incident to their insurer.
- Assure them that you will also report the incident to the appropriate party within the municipality.
- If contacted by the media, inform them that the incident has been reported to the appropriate party within the municipality and an investigation is taking place.
- Refrain from commenting on the incident to avoid prejudicing the insurer and/or breaching any privacy laws.

If at any time you are unclear as to the appropriate response do not hesitate to contact one of our claims management team members. They are there to assist and advise you throughout.

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