

Building Inspection Due Diligence

What Is Your Duty?

Once a municipality makes a decision to conduct building inspections it is at law, held to owe a duty to the individual property owners, future property owners and the public at large to properly review plans, conduct inspections and issue building permits.

Where does liability arise?

Liability for negligent building inspection arises at two major stages of a construction project: the plan approval stage and the on-site inspection stage.

What is the standard imposed?

A building inspector will not be found negligent so long as he/she can demonstrate that they met the standard of an "ordinary, reasonable and prudent inspector in the same circumstances". The exact requirements of this standard will vary depending on: The likelihood of harm occurring, the gravity or severity of that harm, the burden or expense that would be required to prevent the harm. The result is that a building inspector's duty in any given situation is almost entirely fact specific.

Plan Approval Stage

A municipality was held to be 100% liable for approving a permit based on plans that were not approved by an engineer. The municipality had accepted the developer's assurances that the plans complied with the building code and that an engineer's approval was not required.

Site Inspection

In *Ingles vs Tutkaluk*, 2000, the homeowner allowed a contractor to proceed to the later stages of construction work on a home without notifying the municipality or obtaining a building permit. By the time notice was given and an inspection conducted, the underpinnings of the house's foundation were covered by further construction. The inspector relied on the assurances of the contractor that they were properly installed. When the underpinnings turned out to be deficient, causing flooding problems in the basement, the municipality was held to be 14% liable for the homeowner's losses.

Why do municipalities get sued for negligent building inspection?

One more pocket: Claims for negligent inspection usually arise once problems begin to manifest themselves for the building in question. When this happens, the owners will usually pursue several parties for damages, such as the contractor, engineer or the previous owners of the building.

If the building is a large one, such as a condominium complex; or if the problem is one that will cost a large amount to repair, such as a structural problem, the plaintiff will normally have to include as many parties as possible to ensure the maximum possible recovery.

The deepest pocket: The liability insurance policies held by municipalities tend to have higher limits than policies that are held by individuals or corporations. It must also be noted that under Ontario law, defendants will usually be "jointly and severally" liable for a plaintiff's damages. This means that municipalities who are only found partially negligent can end up paying all of the Plaintiff's damages.

The only pocket: It is often the case that by the time a problem manifests itself, which can be years after the original construction and inspection, the municipality may be the only defendant left to sue.

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