

## 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?

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.

# News & Views

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### 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?.