



Navigating Local Government Liability in the Face of Climate Change

Brian Lee, Legal Counsel
Megan Chorlton, Chief Executive Officer

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MUNICIPAL
INSURANCE
ASSOCIATION
OF BRITISH
COLUMBIA

Outline

Negligence

Nuisance

Scenarios



Elements of Negligence



Duty – Local government owed a duty of care to the claimant;



Breach – Local government breached duty of care; and



Damages and Causation – Breach of duty of care caused the claimant to suffer damages, which were foreseeable.



Examples of Negligence Claims



Overwhelming of
municipal drainage
systems



Sewer backup



Water line break



Removal of natural
assets which
change flow of
water



Failure to inspect
and maintain storm
water management
systems
reasonably



Wildfire



Defending Against Negligence: *Marchi* Policy Decision Factors

The level and responsibilities of the decision maker

The process by which the decision was made

The nature and extent of budget considerations

The extent to which the decision was based on objective criteria



Defending Against Negligence



WRITTEN POLICY



MEASURABLE AND
ATTAINABLE GOALS
AND STANDARDS



IDEALLY PASSED BY
COUNCIL



Defending Against Negligence: Asset Management Policies/Plans

The level and responsibilities of the decision maker

The process by which the decision was made

The nature and extent of budget considerations


The extent to which the decision was based on objective criteria



Defending Against Negligence

- Standard of care was met in the circumstances
- Evidenced by records and testimony of employees





YOUR
PAST IS
NOT YOUR
FUTURE



Nuisance – What is it?



Unreasonable interference with use and enjoyment of their land – no negligence required



Proof that the local government's use of claimant's property resulted in unreasonable interference



No actual damage is required



Defending Against Nuisance

Section 744 of the *Local Government Act* states:

A municipality... is not liable in any action based on nuisance... if the damages arise, directly or indirectly, out of the **breakdown or malfunction** of

- (a) a sewer system,
- (b) a water or drainage facility or system, or
- (c) a dike or a road.



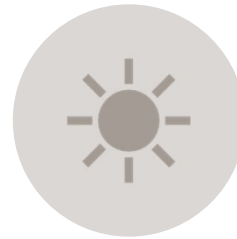
Defending Against Nuisance



SEA LEVEL RISE



DRAINAGE
PATTERNS



EXTREME HEAT
AND DROUGHT



FREEZE THAW
CYCLES

