

2018 LGLA Leadership Forum

You're Canadian! How hard can it be to say sorry?


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Apology Act


- Assented to May 18, 2006
- "Apology" means an expression of sympathy or regret, a statement that one is sorry.....
- Effect of apology on liability – not an admission of fault or liability; not an acknowledgment of liability; does not void insurance coverage; must not be taken into account in any determination of fault or liability.
- Apology is not admissible in any court as evidence of fault or liability.



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MIABC Coverage


- Covers municipal employees, elected officials, directors of various boards.
- Insured provided they are acting within their scope of duties on behalf of the member.
- Property Damage, Errors & Omissions and Bodily Injury.
- Under Bodily Injury, there is coverage for Personal Injury that includes libel and slander (defamation).
- Very challenging type of claim to defend.



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Apology vs Explanation


- "Apology" means an expression of sympathy or regret, a statement that one is sorry.....
- It is not an explanation or excuse for the defamatory comment
- Explanations seldom go over well in court and are seen as excuses and can result in further damages
- A properly crafted apology is the quickest and cheapest way to resolve a defamation claim



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Comment made in Official or Personal capacity?


- Sometimes very obvious
- Sometimes not very obvious
- Was the elected official or board director acting within their scope of duties on behalf of the member?



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Local Government Act (Part 18) - Indemnity Bylaws

- Will indemnify municipal official against an action or prosecution against the municipal official, but only in relation to the exercise of powers or performance of duties or functions for or on behalf of a municipality
- Exceptions: Court finding that the person has been guilty of dishonesty, gross negligence, or malicious or willful misconduct; the cause of action is libel or slander
- Some Indemnity Bylaws cover libel or slander



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Defamation Claims - Facts

- Personal and emotionally charged matters for the parties involved
- Usually an apology will resolve the matter
- Resolve quickly or drag on for a very long time
- Extremely expensive to litigate
- Damages are usually nominal, except for punitive, aggravated and exemplary damages, as well as Special Costs



What do you do if you are sued for Defamation?

- Contact the MIABC (provided you are a Member)
- Seek legal advice
- Apologize
- Take it seriously



What not to do

- Don't ignore or attempt to respond without seeking legal advice
- Don't repeat or spread the alleged defamatory comment



How can you avoid a defamation claim?

- If you can't say something nice, don't say anything
- Be very careful with social media, hard to take it back once it is out there



Questions?