

# Climate Damage and Risks of Local Government Liability

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MUNICIPAL  
INSURANCE  
ASSOCIATION  
OF BRITISH  
COLUMBIA

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LIDSTONE & COMPANY

# Outline

Negligence

Nuisance

Scenarios



# The Municipal Insurance Association of BC

A self-insured pool of 170 local governments

Liability coverage:    Bodily Injury  
                                  Property Damage  
                                  Errors & Omissions

Property and ancillary coverage







# Wildfires





# Flooding







# Extreme Heat



# Elements of Negligence



**Duty** – Local government owed a duty of care;



**Breach** – Local government breached duty of care;  
and



**Damages and Causation** – Breach of duty of care caused 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

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





# 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

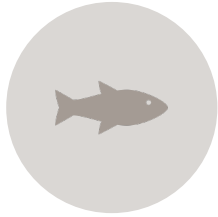
Section 744 of the *Local Government Act* states:

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.



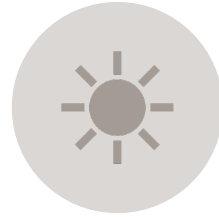
# Defending Against Nuisance



SEA LEVEL RISE



DRAINAGE  
PATTERNS



EXTREME HEAT  
AND DROUGHT



FREEZE THAW  
CYCLES





# Scenarios



# Scenario: Watermain Rupture



In 2023, numerous private properties in the City notice water pooling on their lawns resulting in damage.



When the incidents were first reported, it was assumed each originated on the private lines. After the fifth call from the same street, the City investigated its main line.



A significant break was detected in the City's main line and the property owners sued in negligence and nuisance.



The City had plans, yet to be ratified by Council, to upgrade water mains in the City over a 15-year time frame. The main in question was not slated for upgrade until 2027.



In the past five years, no issues had been reported with respect to the water line in question and the lifespan of the pipe went through to 2028.



# Scenario: Watermain Rupture

- Is the City liable for the damage?
- What defences might apply?
- What steps could the City take to avoid a similar claim in the future?
- What would you do differently?





# Scenario: Extreme Heat



In July 2012, a District experiences a week-long heat wave with temperatures ranging between 34 to 38 degrees Celsius.



The District opened three designated cooling centers.



On day 2, air conditioning units in one of the cooling centers failed as they had exceeded their serviceable life. The District had not budgeted to replace them. The cooling center closed.



Maximum capacity was reached at the open cooling centers and residents were turned away.



Three people were hospitalized and one person died, all of whom were turned away from the cooling centers.



# Scenario: Extreme Heat

- Is the District liable for the injuries and death?
- What defences might apply?
- Would the outcome be different if the events took place in 2030?
- What would you do differently?



# Scenario: Drainage



Significant rainfall from an atmospheric river overwhelmed a City's stormwater system in November 2022. Numerous private properties flooded and were damaged.



Those property owners sued the City for nuisance and negligence.



The City had a written policy, ratified by council, to inspect storm drains once every three years.



Records indicated the storm drains were free, clear, and operating as designed during the last regular inspection in 2021.



In the past ten years, no flooding issues relating to the stormwater system have been reported.



# Scenario: Drainage

- Is the City liable for the damage?
- What defences might apply?
- What steps could the City take to avoid a similar claim in the future?
- What would you do differently?





# Questions?

