



Public Officials Directors and Officers Liability Insurance

Understanding and Reducing Your Risks

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The most common of lawsuits made against public officials is for wrongful acts committed in the performance of duties to a public entity. Many councillors find themselves appointed to multiple boards. While some appointments may be directly related to their elected duties, others might be on external non-profit entities. Despite governmental immunities or torts, public officials can be held liable for their actions while carrying out their duties.

All decisions made by public officials, regarding business and building permits, zoning, employment practices, and many seemingly unimportant everyday activities carry the potential of a devastating lawsuit.

Lawsuits can be brought against you for discrimination in selecting, promoting, disciplining, or dismissing employees. They can also arise from mismanagement of, or improper administration of, funds, grants, or budgets, and improper granting or denying of franchises, permits, or licenses are other targets of recent litigation. Zoning approvals or denials are also common exposures. There is also an exposure to claims against failure to protect public trust, including failure to properly insure, attend meetings, or to examine documents. It seems as if there's nothing about public service that is not at risk.

In Canada, the leading causes for litigation against directors or elected officials today stem from employee dismissal, discrimination, land use, and contract disputes. A significant portion of the workforce is employed by some type of governmental entity whose purpose is to provide certain services. It is essential for a municipality to have robust employment practices with a focus on protection of not only the general

public, but their staff and volunteers. Saskatchewan municipalities are not immune to this risk. Claims related to employment practices related to wrongful dismissal and human right violations are on the rise according to SUMAssure, Saskatchewan's municipal insurance, with claims almost tripling over the last five years.

Recent developments in cyberattacks in municipal organizations have also shown that municipal councils in Canada also face increased risk of personal liability. Recent data breaches and other cyber security events often cause municipalities to suffer staggering costs and losses, severe adverse reputational impacts, and possible third-party litigation and liability among other consequences. Lawsuits may arise alleging that the council failed to properly oversee the municipality's cyber security protocols, or the actions taken after a cyber breach.

COVID-19 is also another recent development that will place unforeseen consequences on municipal councils. The actions they are taking today could result in lawsuits much further down the road. Failure to take adequate protections to protect the public, staff, and volunteers against the virus could result in action against the municipality and its council. Extra care must be taken, as most liability policies have exclusions for virus- and pandemic-related events.

A need has arisen for an insurance policy that covers both the liability of the public entity itself and the liability of the individuals who act on behalf of the entity. With the increasing number of suits and the large awards, either board members or municipal council will need the proper legal protections.

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What a municipality should be looking for is an insurance policy that provides coverage for damages or defense costs from lawsuits against elected or appointed officials, employees, and volunteers. For example, the SUMAssure Insurance Reciprocal policy includes the following coverages:

- Alleged errors and omissions.
- Misstatements and misleading statements.
- Negligence or breach of duty.
- Employment Practices.
- Coverage for elected officials sitting on outside boards [if outside board does not have their own insurance].

Councils should be discussing the implications of cyberattacks and privacy breaches. They should be reviewing their cybersecurity procedures and taking necessary steps to adequately protect the municipality against incidents of this nature. Strong consideration for a cyber liability policy should be considered which will cover most of the costs and potential lawsuits associated with a cyberattack.

Finally, councils should be developing a risk management strategy around COVID-19 and future pandemics and discussing with their insurance provider the various provisions and exclusions that may be present in their insurance policies. Claims examples:

When an economic growth district didn't notify the public sector about its scheduled meeting, the problems only began. The minutes were never released, yet officials decided to levy certain property owner fees. The lack of transparency resulted in a violation of

public meeting and district laws. Residents of the district ultimately discovered what had transpired and brought a lawsuit against the district for violating the *Freedom of Information and Open Meeting Acts*.

A mistake was discovered in the electronic property tax roll system. They discovered that there had been a miscalculation of sewer charges for the last two years. The system was duly fixed. Then, the district mailed notices about tax revaluation and related payments that had not been collected. The residents sued the sewer district collectively for negligence and breach of contract.

After a man donated a sizable amount to the municipal park's new public playground fund, it was used for a land clean-up. The enraged donor sued the municipality for misappropriation of funds. The damages included the full amount, plus interest incurred. Because most of the monies had already been used on the clean-up, there was not sufficient funds to cover expected compensation.

The managing director of a particular water district began helping himself to district funds for personal expenses. After many months, the district found itself with a lack of capital and declared bankruptcy. An associated bank that had reissued an outstanding financial note brought a lawsuit against the district board for failure to properly oversee their directors, asserting breach of duty of care and misrepresentation of financial information.

For more information on this topic, contact your SUMAssure representative at inquiries@sumassure.ca. ■



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