



MUNICIPAL INSURANCE ASSOCIATION
of British Columbia

Tidbit Exchange^{CA-2}

September/October 2009

The MIABC Board of Directors is Pleased to Announce the New Risk Management Grant Program

The Risk Management Grant Program is designed to assist members in the financing of risk management initiatives to reduce liability claims.

Maximum Grant Amount

Members will be eligible for a maximum grant of 1% of their Subscriber Account balance each year to fund risk management initiatives. Unused eligible funds may be carried over into subsequent years. Members with account balances under \$50,000 will be eligible for grants of up to \$500 each year.

Time Period

The program will run for two years using the 2009 and 2010 opening balances. The Board may announce at the 2010 Annual General Meeting that the program will be extended into 2011. The grant must be requested and expenses incurred between October 1, 2009 and December 31, 2010, unless the program is extended.

Qualified Expenses

Any goods or services acquired with the primary purpose of reducing liability claims will qualify. Examples of qualified expenses include equipment for inspections, costs associated with fulfilling any recommendation in a loss control report, policy reviews, safety equipment, signage, risk management studies, and site inspections. The emphasis will be on promoting the undertaking of new initiatives, rather than funding existing services.

Other Conditions

- Members can apply for multiple grants each year provided they have not reached their maximum amount.
- Grants are payable to the local government unless a Council resolution or letter from the Treasurer authorizing otherwise is provided.
- A copy of the quote, purchase order, or receipt should be provided.
- MIABC may publish details of approved initiatives with the view of encouraging other local governments to undertake similar initiatives.



To Apply

You can complete the grant application form on our website under the Forms tab of the Members section. Please contact Mitch Kenyon at mkenyon@miabc.org if you have any questions.

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Community Groups, Special Events and Liability Insurance

Every year various groups approach their local government requesting that they insure their community group or special event. In most cases, their reasoning is that the event will benefit the community, the residents and/or bring visitors to the community. In other cases it is the cost of insurance that they find overwhelming.

Community Groups provide valuable services to their respective communities and do so independent of local government. Their funding comes from a variety of sources and they direct and control the activities of their service. They are a separate legal entity operating as an independent and therefore require their own General Liability Insurance as well as Directors & Officers Insurance.

Special events organized, supervised and under the direct control of local government are insured under the Local Government's MIABC Liability Protection Agreement (LPA), however not all events may be insured. For example if the special event includes participation by a local service group who will operate and manage a Beer and Wine Garden, or serve food, in conjunction with the event, they would not be insured under the LPA. This operation is neither organized, supervised or under the direct control of local government. If other local vendors are invited to sell food, operate an air filled castle,

their activities are not insured either under the LPA. Special events organized by local Chambers of Commerce or other Community Associations cannot be added to the MIABC Liability Insurance Program and these groups should be directed to a professional insurance broker. When an event is to be held on local government lands and/or facilities, even if there is no fee charged to the organizer by local government, the organizer should be required to add the name of the local government to the organizer's insurance policy as an "Additional Insured". The reason for making this requirement is to ensure that the local government is not exposed to the financial costs associated with a liability claim for which local government had no responsibility. If local government is responsible, MIABC would assume responsibility for the management of the claim on behalf of the local government.

In most cases identifying and managing the exposures to loss by preventing injuries, including damage to property, is the real issue, the cost of insurance to a Community Association is a cost of doing business and therefore should be budgeted.

A Risk Management Guideline for Local Government Festivals & Special Events is available on the MIABC Website, www.miabc.org



Legal



Tidbits

Trip and Fall Claims – All Municipal Property is not Created Equal: Variations in Standards of Care for Municipal Property

In defending trip and fall claims, municipalities are often successful in relying on their inspection and maintenance policies applicable to the type of property in question, whether it is on municipal sidewalks, parking lots or roadways. However, where a policy defence is not available, for example if the municipality did not have a policy



or failed to follow its policy, then in assessing whether the municipality was negligent, a court will analyze the standard of care that the municipality ought to be held to when inspecting and maintaining an area where a trip and fall has occurred.

“Standard of care” is a legal principal in the law of negligence wherein a court assesses the degree of care that a reasonable person should exercise in a given situation. Case law suggests that the standard of care that a municipality will be held to can vary depending on the type of area where an accident occurs. For example, areas that are intended solely for pedestrian use

(sidewalks) will be held to a higher standard than those areas that are not exclusively intended for pedestrian use (parking lots and roadways). The differences in standards of care arise from the varying degrees of foreseeability that an accident may happen in a particular type of area. Factors to consider are the types of traffic using an area, the frequency of use of the area and prior history of incidents.

In practice, and in terms of pedestrian safety from trip and falls, the inspection and maintenance of walkways are held to a higher standard of care than parking lots, which will in turn be held to a higher standard of care than roadways. Further, areas that are undeveloped or rural will be held to a lower standard of care.



The variations in standards of care for municipal property mean that it is not necessary for a municipality to adopt the same level of inspection and maintenance policy for all municipal property where pedestrians may be expected to walk. Rather, different policies can be implemented for different types or areas of property while still meeting the standard of care.



Ask Ann Slanders:

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Dear Ann Slanders: Why does MIABC staff settle some claims when the local government has proper procedures in place?

Dear Well Intentioned:

As a matter of policy, MIABC staff do not settle claims unless we are of the opinion that there is some risk of liability in that case. So we do not engage in nuisance or economic based settlements like many private insurance companies do. However, sometimes the facts of a case are such that there is a risk that a Court may find liability even in cases where proper procedures are in place. For example, there are times when:

- 1. the policy or procedures are not actually followed by staff;*
- 2. the actions by staff are not documented and so there is insufficient evidence that appropriate action was taken by staff in that case; or*
- 3. the allegation is that staff ought to have noticed a nearby hazard while on site in accordance with the local government's policy.*

Where it is determined that there is a risk of liability, MIABC staff take steps to settle the claim with the settlement taking into account a deduction from the Plaintiff's overall claim to account for the risk to the Plaintiff that its claim against the Local Government may fail. Thus, if it is determined that the Plaintiff has a 50% chance of success, MIABC staff may settle the action by contributing 50% towards the Plaintiff's overall claim.

If our members have any questions or concerns about its liability position in any case, we encourage you to contact our MIABC staff to discuss the claim and our intended approach.

Please send your questions to Ann Slanders c/o Adrienne Atherton at aatherton@miabc.org, and Ann's response to your question may be published in a future edition of Legal Tidbits.

Twisted Legal Briefs



If you have a lawyer joke or comic, please send it to Twisted Legal Briefs, c/o Adrienne Atherton at aatherton@miabc.org, and it may appear in a future edition of Legal Tidbits.

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