

MANAGING PUBLIC EXPECTATIONS IN THE EVENT OF A CLAIM

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Local governments occupy a unique position and regularly face a broad spectrum of claims which may relate to:

- Events within the geographical boundaries
- Its “permitting” authority
- As the owner/occupier of roads, sidewalks and other infrastructure
- As the owner of capital projects



Claims are regularly made by parties which include

- Homeowners
- Injured people
- Companies
- Developers
- Contractors



The viability of claims made run the entire gamut from claims which:

- Are legitimate and will likely succeed
- Are the fault of another party
- May carry some risk for local government
- Or ... are hopeless (for any number of reasons)





Local government exposure to claims falls into two categories:

- First – exposure to a monetary Judgment (or other remedy ordered by the court)
- Second – exposure to the “claims process” itself



Managing expectations is a critical element in the reasonable resolution of claims





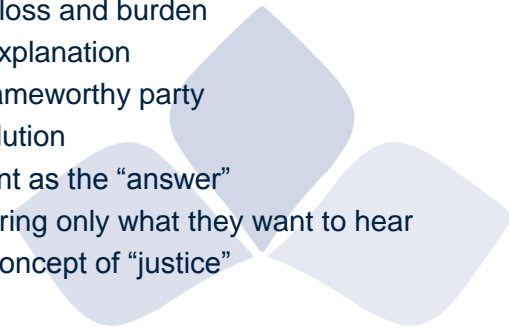
The goals of managing expectations include creating reasonable and appropriate expectations by:

1. Under-Promising
2. Over-Delivering



Understanding the psychology of a claim:

1. High stress situation - emotional
2. Varying sophistication
3. Claimant may indeed be blameless
4. Facing financial loss and burden
5. Looking for an explanation
6. Looking for a blameworthy party
7. Looking for a solution
8. Local government as the “answer”
9. Sometimes, hearing only what they want to hear
10. The subjective concept of “justice”





Variety of claim types each have their own implications for the claimants:

- Minor/moderate injury
- Critical injury
- Minor/moderate financial loss
- Critical financial loss



Conclusion = proceed with contextual awareness and caution in all communications with claimants





Important context = Elements of MIABC Claims Management Philosophy:

1. If liability = negotiate and settle the claim quickly and fairly
2. If no liability = deny the claim and defend the matter vigorously
3. If potential/shared liability = negotiate a settlement for the LG proportion and seek contribution from other responsible parties
4. No payments for “nuisance claims”



Important context = “Claim” and “Pre-Claim” stages:

1. Claim Stage – Claim is initiated by giving formal notice (per LGA, s. 763) or initiation of a lawsuit
2. Pre-Claim Stage – Everything up to the point of the Claim Stage and represents the time to avoid a claim materializing



Expectations can be created throughout the process:

1. Front line staff
2. Supervisory staff
3. Management staff
4. Local Gov't claims/risk staff
5. Elected officials
6. MIABC/other insurer
7. Liability defence counsel



Appreciate: The task of “claims evaluation” is specialized work which requires both training and broader contextual knowledge





Those tasked with claims evaluations do not typically include:

1. Front line staff
2. Most supervisory staff
3. Most management staff
4. All elected officials



Stages of Claimant Contact Evolution:

1. Front line staff experience
2. Supervisory/Management and Local Gov't claims/risk staff
3. MIABC claims examiner
4. Liability defence counsel





Front Line Staff Experience

- Claims “first responders”
- Staff most often includes: Public Works, Building, Planning, Parks and Rec
- First opportunity to create and manage appropriate expectations
- Staff may feel responsibility to correct problems they perceive they have created



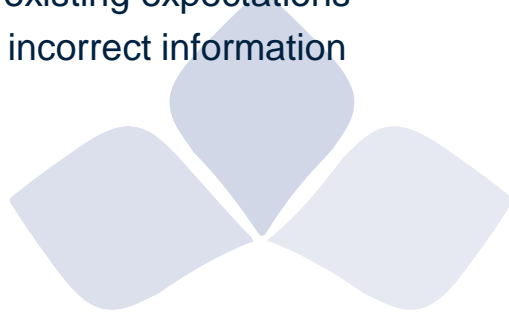
Front Line Staff Advice:

- Be polite and listen
- Refer to home insurer
- Or, refer to local gov’t claims staff
- Do not discuss or debate responsibility
- Be aware that people usually hear what they want to hear
- Avoid creating expectations as to claims
- Keep notes of any discussions – log book or incident report
- Take photos, measurements, retain possession of relevant infrastructure element
- Follow up directly where appropriate



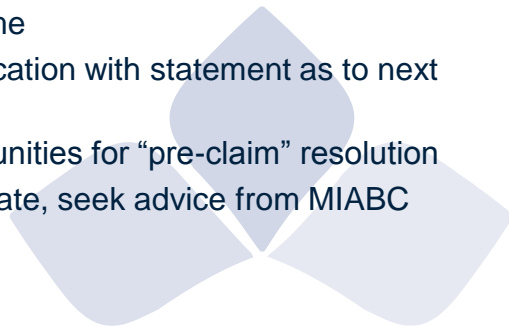
Supervisory/Management Staff Experience:

- Often face people already who are already frustrated
- May face pre-existing expectations
- May be given incorrect information



Supervisory/Management Staff Advice:

- Listen and commit to a process – not an outcome
- Gather relevant information (including broader context)
- Follow up on time
- Clear communication with statement as to next steps
- Look for opportunities for “pre-claim” resolution
- Where appropriate, seek advice from MIABC





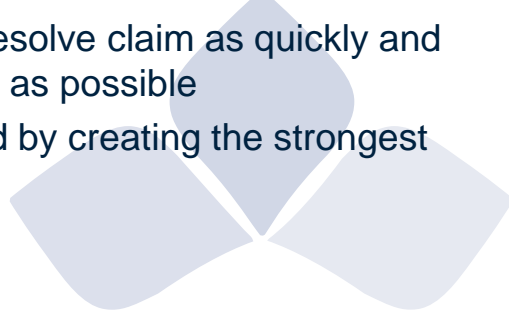
MIABC claims examiners:

- Role = Investigate, Evaluate, Negotiate, and Manage the Litigation if necessary



Liability Defence Counsel:

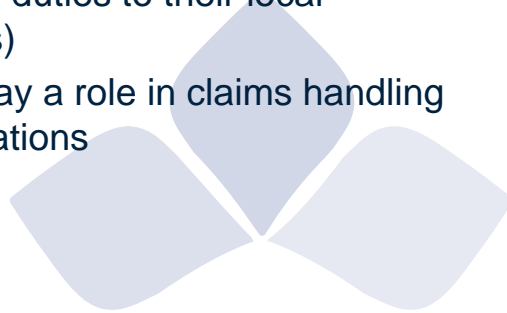
- Once litigation has been chosen by a claimant as the forum for dispute resolution, that becomes the focus
- Will work to resolve claim as quickly and inexpensively as possible
- Accomplished by creating the strongest possible case





A word or two about elected officials:

- Can play an important role in managing expectations
- Owe fiduciary duties to their local government(s)
- Should not play a role in claims handling or communications



Freedom of Information (FOIPPA)

Considerations:

- Some problems have arisen with privileged communication disclosure
- Advise privacy/FOIPPA officer of potential claimants





Dealing with difficult claimants:

1. Establish single point of contact
2. Always two staff members present
3. Consider “in writing only” protocol
4. Confirming letters/emails
5. Keep good notes
6. Remain professional and take the high road
7. Make no promises as to outcomes
8. Take steps if verbal abuse or threats of physical abuse

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