

# Behind the Curtain and Before the Bench: A speed-run through litigated claims

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- 1. Have a system in place for receiving initial claims.** A reliable system for managing claims as they come through is key to properly defending claims. How are notices being received? Is there an assigned person monitoring this system? Is the municipality aware of the specific information needed from the Complainant? Where do the notices go?
- 2. Document your inspections.** Use checklists or forms to keep track of what was done, when, and by whom. In many cases, written evidence is superior to oral or 'unwritten' evidence when relying on a "Core Policy" defence.
- 3. Implement and follow maintenance policies, bylaws and procedures.** The appropriate standard of which to follow a municipality's policy is the standard of reasonableness.
- 4. Have a system in place for receiving *litigated* claims.** Having a streamlined system for receiving Notice of Civil Claims is key to ensuring response deadlines are met. When a Notice is received, who is it sent to? Who is doing the initial assessment of the claim? Is the municipality's legal team advised of other parties involved?
- 5. Consider who the municipality's representative will be.** If Examinations for Discovery are scheduled, the municipality's legal team and the municipality itself will work together to determine the most appropriate representative and will prepare them in advance of Discovery. The representative does not have to know every single aspect of the policies.
- 6. Resolution of claims.** In most cases, claims will resolve through settlement or structured means such as mediation. Only a small portion of claims will go through to trial or adjudication. The legal team will work with the municipality to be fully prepared for trial.
- 7. Be prepared for liability assessments to shift throughout litigation.** New information and evidence can radically shift original views of the claim. Pivoting in our assessments of the claim is a common part of litigation defence. Be alive to seemingly trivial pieces of information having a significant impact on the risks of the claim.