LIABILITY EXPOSURE OF AUTHORITIES

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THREE STEP ANALYSIS

1. Is the act or omission complained of a policy decision or an operation matter?

2. Was the any negligence in the exercise of the duty?

3. Is there any policy reason in law not to hold the public body or official liable?
POLICY v. OPERATIONAL

- No Liability for policy decisions
- Policy decisions involve political choices
- “In the case of the exercise of a discretionary power by a municipal corporation, case law has consistently stated that failure to exercise this power does not render the municipal corporation liable. The exercise of a discretionary power that depends on the wishes or political constraints of a municipal corporation – whose decision must consider the extent of its territory, its population, its financial resources etc. – is a policy decision. When the municipality elects to acquire a firefighting service, its act also has political ramifications. It cannot be faulted for deciding to acquire only a single fire engine or not to install hydrants.” (Laurentide v. Beauport)
Once a municipality makes a policy decision, the implementation is most often a matter within the “operational sphere” as law terms it. An act or omission by a municipality, other authority or a public official in the operational sphere may subject the municipality or public official to liability, depending upon Steps 2 and 3.
NEGLIGENCE

- The act or omission complained of must constitute negligence in law.

- Negligence is the doing or failure to do that which the reasonably careful, competent and diligent authority or official would do.

- Negligence is a question of fact in each case. Expert evidence to establish negligence is generally necessary.
OTHER ISSUES

- Owner’s neglect
- Joint and several liability
- Causation of damages
- Limiting considerations