

# THE Reciprocal

## Risk Management Conference

Set For June 20th  
to 22nd

MEARIE's 10th Annual Insurance & Risk Management Conference has been scheduled for June 20 to June 22 at the Deerhurst Resort in Huntsville.

A comprehensive preliminary program is in place that addresses all areas of MEARIE's operations, including insurance, employee benefits and risk management topics.

The Conference offers two and a half days of dynamic and interactive sessions, specifically geared to inform MEARIE members of current industry-related issues, as well as updates on MEARIE's operations as a whole.

Delivered in a casual, relaxed and friendly atmosphere, the Insurance & Risk Management Conference also offers the opportunity to network and interact with peers, MEARIE staff and industry representatives.

With the right mixture of educational and networking sessions, this is a must-attend event!

Watch your mail for program and registration information.

We hope to see you there!

## Malpractice Claims:

### Are Utilities Vulnerable?

Can utilities be brought into a legal suit for "Professional Services"?  
The answer is a highly probable YES.

Recent cases employ the following test to determine if an activity is a professional service:

**Is it a service that embraces "both a mental or intellectual exercise within a recognized discipline and the application of special skills, knowledge and training to the particular function in question?"**

Lawyers, doctors, dentists, beauticians, opticians, meeting planners, consultants, association managers and members, real estate agents and insurance brokers, to name only a few, fall within the term "Professional". Several other occupations likely meet the definition as well.

Association executives quite often have a "professional" background. As a matter of fact, it is this professional experience that in many ways is required or desired by the association to deal with matters of their "profession".

Take the example of an association executive who is also an engineer, and who is involved in setting up a professional development seminar, a referral service, or writing an article that gives his/her professional opinion.

One would think that his/her per-

sonal Errors & Omissions policy would cover any errors and or omissions he/she was to make. Maybe so, or at least in part. The question remains: what role did the association and/or other executives play in the activities causing the action? After all, the association is involved and perhaps other executives – every one of them could easily be drawn into a lawsuit.

Issues arising from Professional Liability are of great concern for both the professional and the customer. Times have changed and professionals are now a target of many legal suits.

Today, the public and our legal system expect much more from professionals and are much more inclined to initiate a lawsuit. When adjudicating cases, the courts have based their judgements on an increasingly higher standard of care and responsibility.

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## How to Use This Publication

*The Reciprocal* is for information purposes only, intended for the benefit of MEARIE members. Any information provided by *The Reciprocal* shall not represent confirmation of coverage for specific circumstances, incidents and claims. Individual cases of coverage interpretation are dealt with external to this publication and shall be solely determined by MEARIE policy wordings. Members wishing assistance on specific matters are invited to consult with MEARIE staff directly.

(E. & O.E.)

## Malpractice Claims

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### MEARIE Coverage

Members should be aware that coverage under the MEARIE liability policy covers Errors & Omissions of the named insured for operations normally covered by the policy and includes Professional Liability.

This higher accountability can be overwhelming and even frightening for many. To think that you are responsible for every action you do or fail to do, or allegedly did or failed to do, and that any error, however innocent, could bring severe or negative consequences, is quite unnerving.

### Malpractice: An Ounce of Prevention

Each organization should have sound procedures to follow. These can include:

- Organizations should ensure they have formally written contracts/agreements with customers or contractors etc. for services you provide or services you contract out.
- Ensure each contract is reviewed by legal counsel or your insurance company to make sure that the terms in the contract are reasonable. An organization may be held liable for something it doesn't want to be responsible for but which has been included in the terms of a contract/agreement.
- When contracting out services, ensure the contractor or sub-contractor has adequate limits of insurance\* and your organization is listed as an additional named insured on their policy.

\*limits of insurance generally range from a minimum of \$2 million up to as much as \$20 million. The type and extent of services or work to be performed should be a factor in determining an adequate limit.

## Environmental News:

### Great Lakes Power Inc. Receives ISO 14001 Certification

On December 31, 2000, Great Lakes Power Inc. received ISO 14001 certification. With this certification, Great Lakes Power Inc. now has an environmental management program that is recognized worldwide. Certification was received through QMI, a division of CSA International.

Although requiring a lot of time, energy and money, Great Lakes Power Inc. should be congratulated on this achievement. The utility has demonstrated due diligence with respect to implementing an environmental management program that identifies any potential exposures to environmental risks and addresses prevention measures for environmental claims.

**Many utilities are at varying stages of implementing an environmental management program. The following outline can assist your utility in the process of implementing an environmental management program:**

#### Stage 1

- Identify aspects and risks
- Identify legal requirements (review compliance for the utility industry)
- Develop a policy (management commitment)

#### Stage 2

- Assign responsibility & develop structure
- Identify stakeholders & their needs
- Develop a summary manual

#### Stage 3

- Identify variables (equipment positions)
- Develop targets, objectives & programs (use existing processes, i.e. Emergency Response Plan)
- Develop an effective documentation system
- Begin development of operating procedures (work instruction)

#### Stage 4

- Develop emergency response plan and test procedure (environmental incidents)
- Develop corrective and preventive action procedure
- Develop communication plan (external and internal)
- Begin development of training manuals

#### Stage 5

- Develop auditing process
- Develop measuring and monitoring techniques
- Complete all procedures and work instructions
- Complete training
- Develop a check list for regular items (use existing regular inspections i.e., fire/safety)
- Test emergency response capabilities
- Conduct internal audit
- Conduct management review
- Corrective and preventive action

The next step is to decide whether your organization will become ISO 14001 certified or whether you will obtain an audit to determine if your EMS program is ISO 14001-compliant. Please note that **even though a utility may not wish to obtain certification, it is essential that it maintain an EMS program** to fulfill their organization's commitment to due diligence and to minimize environmental risks and liabilities.

MEARIE has formulated a program to offer environmental management audits. These can be used prior to Certification to ISO 14001, or to determine whether the EMS follows the principles of ISO 14001 and captures the utility's commitment to due diligence. For more information, please contact Magdalena Nagy, toll-free, at 1-800-668-9979, extension 5355

## Claims Corner

The following are some basic Do's and Don'ts to assist you in assisting us.

### **DO obtain a written notice of a claim from the claimant whenever possible.**

Once a claimant has communicated that he/she has incurred damages and wishes to file a claim, ask that they provide your utility with written notice, including full details of the alleged damages. The claimant's letter should, where possible, include repair invoices/quotes and a description (i.e., year, make, model) of the damaged property. As any liability for damaged property is based upon the actual cash value of the property at the time of loss, the specific details of the property are essential to determining any amount payable. The more information obtained in the early stages of the claim, the faster the claim can be resolved.

### **DO acknowledge receipt of the claim.**

Once written notice has been received, the utility can send a letter of acknowledgement to the claimant, confirming receipt of the claim and indicating that the claim has been forwarded to the utility's liability insurer. The letter should also state that if the claimant wishes to discuss his/her claim, they should contact the MEARIE Adjuster. If you would like a sample letter, please contact MEARIE's Director of Claims, Al Friesen.

### **DO provide written notice of claims to MEARIE as soon as possible.**

As a condition of the liability policy, written notice of a claim must be provided to MEARIE and its Adjuster as soon as possible. Any additional information that is available at this time should also be sent to MEARIE and its Adjuster (i.e., writs, internal reports, supporting documentation, etc.). Where the claim is large or unusual, MEARIE's Adjuster or Director of Claims should be notified by telephone, followed by written notice of the claim.

### **DO assist in the investigation and settlement of the claim.**

As a condition of your MEARIE liability policy, utilities are required to assist in the investigation of claims. This includes securing and giving evidence and providing documentation. It is therefore very important that the utility employee (who is responsible for reporting claims to MEARIE) ask for internal reports from employees with relevant information to the claim; the employee also must provide MEARIE with the names of any witnesses that could assist in the investigation or any possible litigation. All involved employees should be strongly encouraged to document their findings and activities and if warranted, and take steps to preserve whatever evidence is available at the scene. In cases where liability is declined and we are forced to litigate the matter, this initial evidence is critical and the courts will find written documentation much more reliable than the involved employee's memory of the event some two years after the actual occurrence.

Any time information is received or becomes available, it must be sent to MEARIE and its Adjuster.

### **DO forward to MEARIE any legal notices and documents received as soon as possible.**

It is very important that utilities forward legal documents to MEARIE as soon as possible. In some cases, MEARIE must obtain legal counsel and issue a reply within a specified deadline. In these cases, information should be faxed or sent by courier to MEARIE and its Adjuster.

MEARIE members are invited to submit claims issues or concerns they wish to see addressed in future CLAIMS CORNER features to Al Friesen, Director of Claims.

### **DON'T admit liability to a claimant.**

Utilities must never admit liability to a claimant. Common admissions of liability have included utilities making payments to claimants or promising to reimburse claimants for damages suffered. By admitting liability, a utility risks paying all costs associated with the claim. Why? Because admitting liability not only contravenes a policy condition but it can lead to future difficulties with your customers who may have raised expectations of you because of your admission.

### **DON'T make any claim payments unless you have received approval from MEARIE.**

Utilities should never make direct payments to claimants unless MEARIE has given its approval. Making payment to a claimant is the same as admitting liability. MEARIE's liability policy is very clear on this point – only MEARIE has the right to make final payment decisions. As indicated above, if the utility makes this decision on its own, MEARIE's policy may not respond to the initial payment or any further damages claimed.

We understand that occasions may arise where a direct payment is advantageous to all parties involved; thus, pre-approval is not difficult to achieve and most often one call to MEARIE's Director of Claims or Adjuster may be all that is required. Again, it is important to remember that any payment must be based upon the actual cash value of the item destroyed. As an example, we do pay the replacement cost of a damaged 5-year-old television set but fulfill our legal obligation by paying a depreciated value.

### **DON'T respond to your customers' requests for status of their claim without first making inquiries to confirm the status.**

All such inquiries can be made to MEARIE's Director of Claims at 1-800-668-9979, extension 5315 or MEARIE's Adjuster at 416-422-1824. Following this procedure will ensure accurate and consistent communication and assists member utilities in the handling of difficult claimants.

## In the Know: MEARIE Answers Your Questions

This question-and-answer column is intended to provide subscribers with the answers to commonly asked questions regarding risk management or coverage issues. The responses provided in this article are for information purposes only, and are not intended to represent MEARIE's insurance coverage position. MEARIE assumes no responsibility for claims incurred by any member utilities that arise out of their decisions to either apply or reject, in any form, the responses provided herein.

**Q** How long does it take to adjust a claim?

**A** On average, it takes six weeks to adjudicate and process MEARIE liability insurance claims. At first glance, this may appear to be lengthy; however, this length of time is short compared to the standard insurance policy. Why? Because for liability insurance claims, the following questions must be asked:

- Did a third-party suffer damages?
- How did the damages occur?
- Does the liability insurance policy respond to this claim?
- Is the utility legally liable?
- Once proper back-up receipts and estimates are received, how much should be paid to the third party?

We have found that in order to get all the answers to the above questions, adjudicate and process the claim, six weeks is required. Having said that, if a claim is involved in litigation or there are complex issues at hand, it could take longer than six weeks.

**Q** A residential customer of our utility has informed us that a tree growing on her property is now contacting the hydro feed lines to her house. She has recognized this hazard and requested that we cut back some of the tree

limb. Does the fact that the tree is on private property change our responsibility to this customer?

**A** Generally, the responsibility for overhead plant maintenance is a function of ownership. If the utility not only installs but also owns the feed lines to the residence (which we understand to be the case in most municipalities, except for long-distance line feeds), then the utility's responsibility extends beyond the initial construction.

In this case, the customer has alerted your utility to a possible hazard, which – in retrospect – places the onus on the utility to detect and solve. Although the customer's request implies that permission for the utility to perform overhead plant maintenance is granted, it does not release the utility from exercising good judgement in securing "official" permission from the homeowner. The utility should have an in-house tree trimming policy that includes standardized procedures for responding to customer requests.

If nothing else, this can minimize the chance of mistakes happening, such as trimming the wrong tree.

From a broader perspective, whenever the utility owns facilities, even if situated on private property, the util-

ity risks being found liable due to negligence if it ignores the following prescription:

- Acknowledging the customer's request for maintenance or repair and responding in a reasonable time and manner;
- If the utility is unable to take care of the customer itself, then assign an outside professional (in this case, a tree-trimming contractor) who can complete the job.

In situations where the utility does not own the feed lines serving the customer, the responsibility to maintain the lines is less clear. The utility may still have some performance arrangement, either by written or implied agreement, to maintain the customer's lines. **Then**, it is important that – if not already spelled out in the agreement – the utility define the service ground rules.

In a worst-case scenario, the customer who owns his feed lines is given **no direction whatsoever** by the utility to address the situation where a tree limb is contacting the lines, and the customer attempts to rectify the problem himself. Even if the utility does not have a service agreement to trim trees around customer-owned feed lines, if the customer queries a potentially hazardous situation, it is in the utility's best interest to act prudently by forewarning the customer of the perils of attempting to fix the problem himself. He should be advised to consult professionals to take care of the situation.

In any case, whether or not the utility owns and/or maintains the feed lines, the utility is best equipped to guide the customer to correct a troublesome tree limb.

Do not forego your public responsibility.



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*The Reciprocal* is published by the Municipal Electric Association Reciprocal Insurance Exchange for its members – some 149 municipal electric utilities. MEARIE is a reciprocal insurance exchange for members of the Municipal Electric Association. The MEA is the utilities' voice to government, Ontario Hydro and others in the industry.

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