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Suing the Fire Department for Their Poor Handling of Your Fire

Years ago I was involved in a file against the Toronto Fire Department arising from a house fire in Toronto, around the time of amalgamation of the City of Toronto. The house fire was in a nice residential area and suffered extensive fire damage, such that it had to be torn down and built new. You can also see our blog – www.bcbarristers.com/en-US/blog.aspx

Part of the problem was the delay in the response of the Toronto Fire Department in arriving at the scene. Given that this fire occurred just past midnight during the week, many neighbours came out to watch the fire slowly consume the home and there were many witnesses who complained of the slow response. There were also a number of neighbours who ran back into their homes and phoned 911 repeatedly, confused as to why it was taking so long to respond.

The neighbours pointed out, excitedly, to 911 emergency services that there was in fact a fire department station just a few blocks away from their fire – so why the delay? We learned later that the closest fire department station was not even advised of the fire initially and instead the 911 call was sent to fire department stations much further away.

It turned out that although this fire happened soon after the City's amalgamation, the fire department's computer system dealt with the fire as if it were under the old, pre-amalgamation system. The fact that this specific burning house was on one side of a dividing line (according to pre-amalgamation boundaries) meant that the 911 call was transferred to the closest fire department in the old boundary. There were further other problems with the handling of the call, resulting in a significant delay overall.

Unfortunately, once the fire department did arrive, they accessed the closest fire hydrant to the scene but this turned out to be a "dry" hydrant. This forced them to find a hydrant a block away and then they dealt with the fire in appropriate fashion.

In our case, there were no issues as to the skill or response of the Toronto Fire Department once they arrived on the scene (and had water from the hydrant); they handled the fire quickly and effectively. Our only issue was the delay in arriving at the scene.

In a recent 2009 Ontario Court of Appeal case, the plaintiff's farm suffered a fire and ultimately, the plaintiff sued its (volunteer) fire department for a lack of skill in handling the fire. **Schouten v. Rideau (Township)** (2009 Ont. CA) was an appeal from the **2005 Trial decision**. The plaintiff's allegation was a lack of skill and expertise of their fire department in fighting the fire – i.e. they did not attack the fire appropriately and therefore the plaintiff's farm suffered unnecessary additional damage as a result. The plaintiff's farm suffered more than \$850,000 in damage and loss from this fire.

At Trial, the Judge found that the volunteer fire department did not properly assess the fire and how best to contain and attack it. The plaintiff alleged that this poor assessment meant the fire spread unnecessary to the silos where the crops were stored, thereby leading to the bulk of the \$850,000 loss. The defence argued that the spread of the fire to the silo was inevitable, given the condition of the fire upon their arrival – i.e. even if the fire department had attacked the fire properly, the silos and crops would still have been destroyed.

Despite this key finding, the Trial Judge did not hold the fire department responsible for the loss and damage, because they did formulate a reasonable plan of attack – perhaps not the best plan – and given the condition of the fire upon their arrival, it was likely that the fire would have spread to the silos (and destroyed the crops) no matter what initial attack had been undertaken. Therefore, the lawsuit was dismissed against the fire department at Trial.

On appeal, the plaintiff was successful in overturning the Trial decision and a new Trial was ordered (on liability only). The Court of Appeal found that a new Trial was necessary to deal with the issue of

causation – i.e. determining whether the loss to the crops could have been avoided if the fire department had properly assessed the fire at first instance.

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