



# Eagle's Eye on Housing: Errors and Omission Insurance - Challenges Facing First Nations

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Insurance requirements for building inspectors, whether employed by municipalities, cities, tribal councils or individual Indian bands, have been discussed endlessly for many years. Meetings, panel discussions, legal opinions, and in some cases actual legal decisions, lead to one conclusion: Any entity employing individuals to conduct inspections on buildings and certify that they comply with national, provincial or municipal building codes or bylaws, could be held liable if such individuals cause property damage or bodily injury to third parties in the course of their duties. They are also liable if an inspector makes an error in inspection and building owners seek legal recourse for damages caused by the error.

Review and examination of case law reveals that courts often find no liability in cases alleging fault of a building inspection. But there have been cases in which the court ruled that the building inspection was either partially or entirely liable. These cases have been heard by the Supreme Court of Canada (see: *Ingles v. Tutkaluk Construction Ltd.*, 2000 SCC 12, [2000] 1 S.C.R. 298). The legal costs to defend against such actions, whether founded or not, are onerous, to say the least. These potential situations put the entity and the individual building inspector at considerable risk. The entity that employed the building inspector and the building inspector can assume the risk, or they can transfer the risk by purchasing insurance.

To properly transfer the risk, one needs to purchase Comprehensive General Liability insurance, which provides protection from claims alleging bodily injury or property damage to third parties. For example, a building inspector is making an inspection and an extension cord he uses is faulty, short-circuits and causes a fire. The building has extensive property damage and the owner, who was on site, was injured in the fire. Legal proceedings are brought against the entity that employed the inspector and the inspector personally. The Comprehensive General Liability policy would respond to the legal defence, as well as settlement costs up to the policy limit.

Professional, semi-professional and service work, such as building inspectors inspecting, rendering their opinion and certifying that the work of others is properly performed and conforms to regulations, is commonly excluded from Comprehensive General Liability policies. For example, an inspector approves a dwelling that is not properly framed and a roof collapses, or a foundation without proper drainage around the footings and water damage results. It is a general rule that if a specific area of a building requires inspection, and such inspection is in error, resulting in damages, the entity or the inspector could be held liable.

The transfer of this risk is accomplished by putting in place Professional or Errors and Omissions insurance. Like the Comprehensive General Liability policy, it will respond to the legal defence as well as settlement costs up to the policy limit.



To properly transfer your risks, we recommend that both policies be put in place. This is a complex topic, and you should discuss it with your existing insurance broker.

For more information, contact Len Bosch at 250 372 33517, or by email at: [len.bosch@hubinternational.com](mailto:len.bosch@hubinternational.com).

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