THE GLOBE AND MAIL

Canadian business must prepare for insurance in the age of climate change

DOMINIC CLARKE
Special to The Globe and Mail
Published Sunday, Jul. 09, 2017 3:49PM EDT
Last updated Sunday, Jul. 09, 2017 3:51PM EDT

Dominic Clarke is partner, insurance practice, at Blaney McMurtry LLP in Toronto.

As Canadian business has discovered, the threat of global warming is no longer confined to disappearing icebergs and distant islands. Today, the risks hit much closer to home.

The 2013 Alberta floods and the 2016 Fort McMurray fires are just two examples of Canadian vulnerability to extreme weather and its devastating financial costs. At an estimated $4-billion, the damages wrought in Fort McMurray are the most expensive insured loss in Canadian history. But Fort McMurray may not retain that dubious distinction for long.

As our climate continues to change, insurance claims are expected to increase in number, complexity and dollar exposure. Canadian business and its insurers need to assess whether and how insurance policies will respond to these claims.

Property insurance is expected to act as the "first line of defence" for Canadians seeking indemnity for extreme weather-related losses. As floods, fires and winds inflict losses across the country, these policies will be first responders.

Extreme weather-related risks, however, will extend far beyond these typical losses. Businesses which experienced the Alberta floods or Fort McMurray fires are painfully aware of how extreme weather can impact day-to-day operations. Heavy rain, for example, may disrupt supply chains, making it more expensive or impossible to stock store shelves. Powerful storms may cause widespread power outages, creating havoc for technology-reliant businesses. Weather that necessitates the closure of transit infrastructure will cause staffing shortages and logistical nightmares.

The 2010 Deepwater Horizon oil spill illustrates how extreme weather can increase exposure to environmental liability as well. More violent ocean storms and oppressive heat can complicate cleaning or rescue operations, even as powerful winds and extreme water conditions exacerbate the spread of contaminants. Businesses handling dangerous products should prepare for increased pollution risks associated with extreme weather.

Canadian municipalities and businesses should also expect more numerous and more severe personal-injury claims. Customers frequenting shopping malls, restaurants and big-box stores, for example, may be at greater risk of slip-and-falls as a result of increased water, snow or ice precipitation. Safety measures, such as the adequacy of snow removal practices, may require reassessment. Any business with physical operations, then, should review the coverage and policy limits contained in its commercial general liability insurance policies.

Climate change may also expose business owners and professionals to new categories of risk. Engineers, architects and those in the construction industries, for example, will be expected to design and build living and office spaces that will withstand increasingly severe weather, and risk liability if they don't. Similarly, businesses may be exposed to product liability claims when previously suitable products such as concrete, piping or steel, fail to withstand severe weather.

Extreme weather events may also lead to liability claims against directors and officers. Shareholders may seek to sue executives whose failure to adapt to climate change or failure to comply with environmental regulations causes a fall in the company's share price. Individuals may pursue corporate boards for business decisions which pollute local waterways or farming communities and contribute to climate change.

While climate change litigation remains in its infancy in Canada, examples of novel losses grounded in climate change have already been witnessed in the United States. In one well-known case, local residents and landowners filed a class-action against dozens of energy and chemical businesses seeking recovery for damages said to have been caused by their operations. Plaintiffs claimed that the emission of harmful gases contributed to global warming and the increased strength of, and damages caused by, Hurricane Katrina. In another case, an Alaskan village sued energy utilities, oil and coal companies on the basis that their greenhouse gas emissions expedited the melting of Arctic sea ice, rendering the community uninhabitable.

Both lawsuits failed. In each case, the courts implied that climate change litigation would not succeed until governments set legislative standards. In Canada, certain governments have expressed a commitment to addressing climate change by supporting clean energy initiatives. Regulatory and legislative guidelines respecting a clean energy economy could well provide the statutory basis for civil liability.

Clearly, Canadian municipalities, businesses and homeowners are already experiencing the impact of climate change. Traditional property policies cannot be expected to provide comprehensive protection for "climate change" losses. Instead, consideration should be given by businesses, insurers, and brokers to the various other insurance policies available, such as business interruption, professional errors and omissions, and directors' and officers' liability policies to safeguard their employees, executives, properties and commercial operations from catastrophic losses.