



Saskatchewan Association of Rural Municipalities

LIABILITY ISSUES AND LEGAL OBLIGATIONS OPERATORS' WORKSHOP



List of Topics

- General liability principles for RMs and operators.
- Common types of claims.
- Principles of liability associated with claims.
- What you can do to reduce or avoid claims.



General Principles



- An RM is, by virtue of section 4 of *The Municipalities Act* (“the MA”), “a municipal corporation [... with] the capacity and [...] the rights, powers and privileges of a natural person.

General Principles



- As a municipal employee, Section 356 of the MA makes it clear that the RM is vicariously liable for loss or injury arising from any act or omission of a municipal officer (which means you) acting in the course of his or her duties if the officer would otherwise be personally liable.

General Principles



- “356(2) The municipality shall:
 - (a) pay the **cost of defending an action or proceeding** against a municipal officer, volunteer worker or agent of the municipality claiming liability on the part of that person for acts or omissions done or made by the person in the course of his or her duties or pay any sum required to settle the action or proceeding;”

General Principles



- “356(2) The municipality shall:
 - (b) pay the **damages and costs awarded** against a municipal officer, volunteer worker or agent of the municipality as a result of a finding of liability on the part of any of them for acts or omissions done or made by any of them in the course of his or her duties.”

Common Types of Claims



- Roads;
- Trespass;
- Flooding; and
- Operation of municipal equipment.

Roads



- Duty
- Standard of Care
- Knowledge of Disrepair
- Signing
- Other Defences
- What you can do to avoid claims

Roads – Duty of Care



- 343(1) of the MA states, “[a] municipality shall keep every ... road ... in a reasonable state of repair ... ”.

Roads – Duty of Care



- Does not apply to every road.
 - Subsection 343(11) of the MA excludes liability for any damages sustained by any person by reason of the disrepair or non-repair of:
 - a road that has been closed if the municipality has posted and maintained a conspicuous notice at each end of the closed road; or
 - a road allowance that is not developed.

Roads – Duty of Care



- Does not apply to all portions of the road.
 - Section 345 of the MA further excludes liability for anything that is not on the travelled portion of the road.

Roads – Duty of Care



- Subsection 343(4) of the MA, stipulates that if the RM fails to perform its duty it is, subject to the provisions of *The Contributory Negligence Act*, civilly liable to anyone who sustains damages as a result.

Roads – Standard of Care



- Must be “reasonable” having regard to the character of the street or road and the area of the municipality in which it is located.
- Might be used without danger by those exercising ordinary care.

Roads – Standard of Care



- The type or class of road
- The traffic volume
- The use to which the road is put
- The means at your disposal
- Weather

Roads – Standard of Care



- The mere fact that you are doing it the same as it has always been done is relevant, but not conclusive. Go to the question of whether you have met the required standard of care.
- Is the road in a reasonable state of repair as required by section 343 of the MA?

Roads – Standard of Care



- The mere fact that a driver was negligent does not preclude a finding of liability against the RM.

Roads – Knowledge of Repair



- Subsection 343(7) states:
 - “A municipality is liable ... only if the municipality knew or should have known of the state of repair or disrepair.”

Roads - Signs



- Signs are required to warn of hazards that prudent drivers, using ordinary care, would be unlikely to appreciate.

Roads - Signs



- Typical Claims:
 - Failure to sign
 - Failure to alert re temporary conditions
 - Objects on road surface

Roads – Additional Defences



- No liability if you can prove that you took reasonable steps to prevent the disrepair from arising.
- Contributory Negligence.

Roads – What you can do to avoid claims



- Be proactive in identifying and dealing with potential hazards on your roads!

What You Can Do Beforehand



- Keep good records!
 - Grading
 - Gravelling
 - Inspections
 - Complaints
 - Signs
 - Accidents

What You Can Do/After the Fact



- Notify insurer ASAP
- Gather relevant information
- Preserve evidence
- No admissions

Trespass



- Entry upon land of another, without lawful justification.
- Consent or statutory authority a defence.

Trespass – What you can do to avoid claims



- Get consent in writing
- Ask if there are any unusual conditions
- Locate property line

Flooding



- Claims in nuisance, either at common law or under statute
- Common causes
 - Inadequate drainage facilities
 - Failure to maintain existing drainage facilities

Flooding



- If a municipality, as a result of the construction of a road, interferes with a natural watercourse, it will be liable to anyone who sustains damage as a result.
- At common law municipalities do not owe a duty to provide drainage or drainage facilities for mere surface water. However, as indicated, *The Saskatchewan Watershed Authority Act* creates statutory obligations.

Flooding – What you can do to avoid claims



- Seek expert advice on what drainage facilities are required.
- In emergency situations, think carefully before doing anything that could be viewed as altering the natural drainage patterns.
- Periodically inspect existing drainage facilities to ensure that they are unobstructed.

Operation of Municipal Equipment



- Collisions with other vehicles or trains.
- Cutting underground cables.
- Damage to overhead lines.
- Mowers, snowplows or snowblowers throwing rocks.

Operation of Municipal Equipment – What you can do to avoid claims



- Be aware.
- Be observant.
- Take precautions.

LIABILITY ISSUES AND LEGAL OBLIGATIONS



Questions?

