

Liability Risk Management for Bridge Infrastructure

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Craig Williams, Director of Insurance and Benefit Programs

Michael Morris, Q.C., Director of Legal Services



THE VOICE OF RURAL SASKATCHEWAN

Outline

- Legal Obligations
- Liability Risks
- Transfer of Risk through Insurance
- Other Risk Mitigation



Liability for Roads and Bridges

Construction and maintenance of roads is the single biggest responsibility of rural municipal councils!



Liability for Roads and Bridges

Duty

- To keep roads in a “reasonable” state of repair
- Applies to all streets or roads under the direction, control and management of the municipality
- Duty extends to bridges as well



Liability for Roads and Bridges

Duty

Does not extend to:

- i. roads which have been permanently closed; or
- ii. roads which have been temporarily closed.



Liability for Roads and Bridges

Duty

- If a municipality fails to perform its duty, it is liable for any resulting damages [subsection 343(4) of *The Municipalities Act*]
- Breach of the duty constitutes negligence if loss ensues



Liability for Roads and Bridges

Standard of Care

- Must be kept in a “reasonable” state of repair, having regard to the character of the road and the area of the municipality in which it is located
- Can be used without danger by those exercising ordinary care



Liability for Roads and Bridges

Standard of Care

Liability is only imposed where the condition complained of:

- i. could be characterized as an “unusual hazard” or “trap”
or
- ii. is said to pose an “unreasonable” risk of harm to
motorists



Liability for Roads and Bridges

Standard of Care

- Type or class of road
- Traffic volume
- Use to which the road is put
- Means at your disposal
- Weather



Bridges in Particular

Standard of Care

Courts have applied same duty to take reasonable care to the design, construction and maintenance of bridges



Bridges in Particular

Standard of Care

- A bridge must be capable of bearing whatever weight is permitted and customary for the area
- Knowledge that a bridge is being used by overweight vehicles, without taking steps to prevent use, has resulted in liability



Bridges in Particular

Standard of Care

- Knowledge that bridge parts have exceeded their intended life span can result in liability
- If you have closed a bridge, users of the bridge do so at their own risk, however the municipality must mark the bridge with a sign indicating its closure in order to rely on this provision



Bridges in Particular

Signing

“... the duty, together with the standard of care, requires that warning signs be maintained, warning of hazards that prudent drivers, using ordinary care, would be unlikely to appreciate”.



Bridges in Particular

Signing

- If a bridge is unsafe regardless of weight, it must be closed, and signs must be erected to ensure that the public is aware that the bridge is closed
- If a bridge can be used by lighter vehicles, then weight-restrict same



Bridges in Particular

Relevance of Standards

Courts are permitted to consider evidence as to any relevant “custom, industry practice and statutory or regulatory standards”



Bridges in Particular

Relevance of Standards

Standards or guidelines are relevant, but not conclusive. Go to the question of whether you have met the required standard of care



Bridges in Particular

Relevance of Standards

Lowering bridge rail heights is Council's decision.

However if someone sustains damage as a result,
there is a risk of liability



Bridges in Particular

Relevance of Standards

If Council is of the view it needs to lower bridge rail heights, it is recommended that you:

- i. set it out in a policy approved by resolution of Council
- ii. take measures to reduce vehicle speed



Liability Risk

Three Primary Scenarios

- Licensed Vehicles Carrying “No-Fault” Occupants
- Licensed Vehicles Carrying “Tort” Occupants
- Unlicensed Vehicle / Implement Traffic



Liability Risk

MV Incidents involving “No-Fault” Injury Occupants

- Recipients cannot sue for benefits in excess
- SGI does not subrogate against “at-fault” party
- Exposure limited to 3rd party vehicle damage claim



Liability Risk

MV Incidents involving “Tort” Injury Occupants

- Approx. 1% of Saskatchewan Residents
- Out of Province residents
- Exposure increased for costly and lengthy Bodily Injury

Claims.



Liability Risk

Incidents involving Unlicensed Vehicles / Implements

- Most commonly Farm Equipment
- Occupants have no Bodily Injury Coverage, unlike in a licensed vehicle
- Exposure greatest for PD and for costly and lengthy BI Claims.



Liability Risk

Other Scenarios

- Bridge Collapse caused by an Overweight Vehicle
- Bridge Collapse without any vehicular traffic



Transfer of Risk

What Insurance Coverage does our Municipality have for our Bridge Infrastructure?



Transfer of Risk

Property Insurance Coverage

- Not commonly available in marketplace
- Not offered by SARM
- Typical property perils not a significant risk, other than Vehicle Impact



Transfer of Risk

Liability Insurance Coverage

Three Main Benefits

- 3rd Party Assessment of Claims
- Policy Limits to cover common and catastrophic losses
- Defence Expenses in addition to limits



Transfer of Risk

Liability Insurance Coverage

- General Liability policy covers 3rd Party BI and PD claims arising from disrepair of Bridge Infrastructure
- Amount of coverage depends on limits purchased (i.e. Excess Liability Coverage w/ SARM)
- 3rd Party Economic Loss covered, if recoverable



Transfer of Risk

3rd Party Licensed Vehicle Damages Bridge

- If driver / owner of vehicle is known, contact SGI Claims
- Liability coverage on vehicle insurance responds to repair damage to bridge



Insurance Requirements for Contractors

Municipalities should require General Liability Coverage for Contractors in all contracts / tenders

- Limit requirements should be reasonable, but adequate
- Demand proof of coverage



Insurance Requirements for Contractors

Importance of Contractor Held Liability Coverage

- Funds their defense and potential settlement amounts in 3rd party claims
- Protects RM in “Joint and Several” judgement awards



Insurance Requirements for Contractors

Errors and Omissions (E&O) Liability Coverage for Professionals

- Additional recommended requirement when contracting Engineering Services
- Covers claims of Negligence by Professionals, which are excluded in General Liability Policies



Risk Mitigation

What You Can Do to Avoid Claims

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



Risk Mitigation

What You Can Do to Avoid Claims

Subsection 343(7) of *The Municipalities Act* provides that a municipality is liable if the municipality knew or should have known of the disrepair



Risk Mitigation

What You Can Do to Avoid Claims

The Court will consider:

- i. whether it was a common occurrence
- ii. what system was in place to check for problems
- iii. was that system followed



What You Can Do to Assist Us in Defending Claims

Beforehand:

Keep good records! Good record-keeping can be invaluable to the defence of a claim.



What You Can Do to Assist Us in Defending Claims

Beforehand:

Keep records of:

- Inspections
- Complaints received, and actions taken
- All warning signs posted on your roads
- Accidents



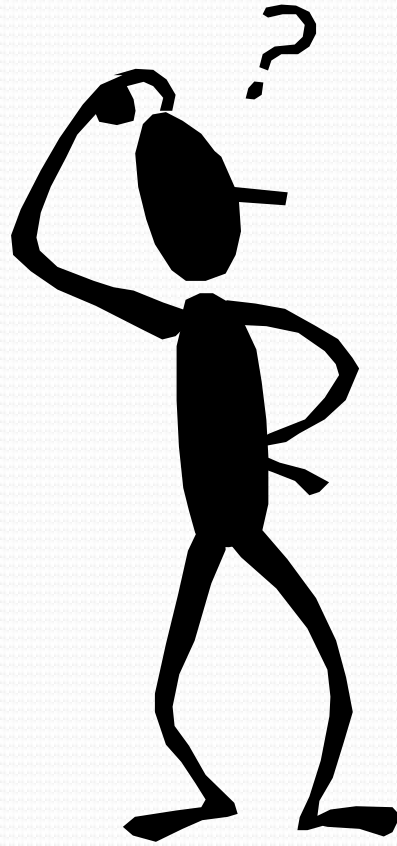
What You Can Do to Assist Us in Defending Claims

After an incident:

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



Questions ...



SARM

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