

# Common Liability Risks and How to Manage Them

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# Common Liability Risks and How to Manage Them

- 1. Common types of claims**
- 2. What you can do to minimize risk**
- 3. How you can assist us**



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# Flooding

## The Framework

Claims in negligence or under *The Water Security*

*Agency Act.*



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# Flooding

## The Framework

Common causes:

- Inadequate drainage facilities
- Failure to maintain existing drainage facilities
- Breaching a road during a flood event



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# Flooding

## Minimize the risk

- Ensure adequate draining facilities in place
- Ensure that drainage facilities are unobstructed
- Consider impacts before breaching road or beaver dam



# Trespass

## The Framework

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



# Trespass

## To avoid claims:

- Get consent in writing
- Be aware of any unusual conditions
- Know where the property line is



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# Road Repair and Signing

## Typical Claims:

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



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# Road Repair and Signing

## Duty

- To keep roads in a “reasonable” state of repair
- “Municipal Road”
- What are the consequences of a breach of duty?



# Road Repair and Signing

## Standard of Care

- Must be “reasonable” 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



# Road Repair and Signing

## Standard of Care

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



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# Road Repair and Signing

## Standard of Care

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



WA-14



WA-2R(L)



WA-11



# Road Repair and Signing

## Standard of Care

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



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# Road Repair and Signing

## Standard of Care

A driver may contribute to his or her own risk of harm while, at the same time, other drivers, exercising ordinary care, would still have been put at unreasonable risk by the state of repair.



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# Road Repair and Signing

- No liability unless you either knew or should have known of the disrepair
- No liability if you took reasonable steps to prevent the disrepair from arising



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# Road Repair and Signing

## What You Can Do to Avoid Claims

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



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# Road Repair and Signing

## What You Can Do to Avoid Claims

- **Failure to Sign Hazardous Conditions Such As “T” Intersections, Sharp Curves or Hidden Intersections**

If you are in doubt as to whether a sign is required, **consult** the Traffic Signing Manual.



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# Road Repair and Signing

## What You Can Do to Avoid Claims

- **Failure to Alert Motorists to Temporary Conditions  
Such as Washouts or Soft Spots in Roads**

The key here is **inspections!**



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# Road Repair and Signing

## What You Can Do to Avoid Claims

### ➤ Claims Based on the Presence of Rocks or Other Obstructions on the Travelled Portion of the Road

Important that your employees be made aware of the need to **check the road surface upon completion** of grading to ensure there are no problems.



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# Operation of Municipal Equipment



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# Operation of Municipal Equipment

## To avoid claims:

- Risk of familiarity
- Remind operators **regularly** of the risks
- Identify risks and establish safe working practices



# Building Inspections

## The Framework

All buildings are to be designed and constructed in accordance with the building standards



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# Building Inspections

## The Framework

By regulation, the Province has adopted as its standards those set out in The National Building Code of Canada, 2015.



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# Building Inspections

## The Framework

While the primary responsibility to ensure that buildings are constructed to Code lies on the owner and/or builder, section 4 of *The Uniform Building and Accessibility Standards Act* (“the UBASA”) imposes on local authorities the legal obligation to “enforce and administer” the UBASA and regulations.



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# Building Inspections

## The Framework

While the UBASA does not say what the civil law consequences would be of a failure to administer and enforce the UBASA, the courts have said that if a municipality is negligent in the performance of its duty in this regard, it will be civilly liable to anyone who sustains damage as a result.



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# Building Inspections

## The Framework

What precisely you should do to administer and enforce the UBASA will vary, depending on the amount of building construction activity in your RM and whether it falls under the UBASA and the regulations.

- Have a building bylaw
- Appoint a building inspector



# Building Inspections

## The Framework

While the general rule is that **all** buildings are to be designed and constructed in accordance with the UBASA and the regulations. **There are, however, exceptions.** The most significant of these, from your perspective, is that for farm buildings.



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# Building Inspections

## The Framework

A “farm building” is defined for the purposes of the UBASA to mean “a building associated with a farming operation”. It includes a residence consisting of not more than two dwelling units, but does not include buildings associated with commercial operations, multiple occupancy residences or assembly buildings.



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# Building Inspections

## So what is required?

- When someone applies for a building permit, the building official is expected to review the plans to see if what is proposed will meet the Code.
- During construction, the building official should be permitted to inspect at certain key times (see subsection 17.2(1) of the UBASA).



# What You Can Do to Assist Us in Defending Claims

## Beforehand:

Keep good records!



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# What You Can Do to Assist Us in Defending Claims

## Beforehand:

**Keep good records** of road construction and/or maintenance activities:

- Grading
- Gravelling
- Inspections
- Complaints
- Signs
- Accidents
- Culverts



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# What You Can Do to Assist Us in Defending Claims

## **After an incident:**

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



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